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UNITED STATES. CONGRESS. HOUSE.

COMMITTEE ON ARMED SERVICES

Hearings. 1949-1950

nos. 1-46

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[No. 1]

ORGANIZATION OF THE ARMED SERVICES COMMITTEE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Tuesday, January 25, 1949.

The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. Let the committee come to order, please.

The purpose of the meeting of the committee this morning is to organize. But before we formally organize, I desire to make a brief statement.

Members of the committee, it is with a sense of deep responsibility that I assume my duties as chairman of the Committee on Armed Services. I do so with the earnest hope that I shall be able to maintain the high standards established by my predecessor, a man who not only possessed rare judgment and insight concerning military problems but also a man well beloved and admired by all of us for his courage, energy, devotion, and his straightforward manner and rare good humor.

Ham Andrews faced a staggering task when he took over the chairmanship of the newly merged Armed Services Committee 2 years ago. The future lay before him uncharted. There were no beacons to guide his steps as he embarked upon a completely new venture and faced the task of bringing together the membership of two separate, independent committees, each of which had gone its own way for as long as it had been in existence, and each of which had been charged with the responsibility of legislating for two entirely separate departments of the executive branch of the Government.

If the old adage is true that early marriage is desirable because it avoids the danger of the participants having become too set in their individual ways, the marriage at which the first chairman of this committee was called upon to officiate was not exactly a promising one. But as we look back over the past 2 years we can see for ourselves what the courage, the vision, and the untiring and self-sacrificing devotion of Ham Andrews has made possible.

Not only has this committee been welded together as one group speaking in the Congress for all of the armed services but, even more important, it has steadfastly and consistently brought its influence to bear upon the departments themselves for the purpose of bringing them together so that they may function as one strong, efficient, integrated team.

This is not to say that much does not still remain to be done. Viewed in the light of our expectations at the beginning of the Eightieth Congress, however, the progress which has been made in the past 2 years is almost beyond comprehension.

The achievement toward which our first chairman made so great a contribution by his ceaseless efforts would still not have been possible had it not been for the industry, devotion, and cooperation of every member of the committee.

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It was largely because of all of these factors that the new committee was able to report out 59 of the 330 laws enacted during the first session of the Eightieth Congress. Altogether, during both sessions, 158 bills were reported by the committee. Of these, all but 30 subsequently became law. Thus, during the Eightieth Congress the Armed Services Committee wrote upon the statute books 128 different laws.

When the Committee on Armed Services began its existence there were no guideposts to point the way for the future. Those of you who were members of the first committee may remember the observation I made at the first meeting to the effect that the policies laid down by the present members would be the guideposts in the legislative years to come, because they would establish the fundamental precedents to be followed by our successors. I also said at that meeting, and I want to repeat my words again as we start anew upon our work in the Eighty-first Congress:

> I deem it to be the responsibility of this committee to be the policy-making body for all of the armed services. It is incumbent upon us to maintain close scrutiny over the operations of the armed services in requiring full compliance with the policies formulated by the committee and approved by the Congress. We must guarantee to the people of this Nation that every dollar of expenditure authorized by the committee is efficiently utilized. As the Appropriation Committee only appropriates for that which we authorize, it is our duty to strive for rigid economy but not false economy at the expense of placing the Nation's defense in jeopardy.

It is the duty and responsibility of this committee to see to it that we plan our Nation's security upon a sound basis. The paramount duty of government is self-preservation. Let us see that this Government remains strong on land, sea, and in the air, in order that our strength may serve as a deterrent to aggressor nations.

It is our devout hope that we shall be able to maintain peace. But if our hopes for peace are not realized, we should make doubly sure that we are prepared to defend ourselves.

Now, if any conflict of views should arise within the services, I believe it is the duty of this committee to strive with an open mind to ascertain fully and completely all of the facts pertaining to matters about which there may be genuine disagreement among honest men of proven professional ability.

When these men do not see eye to eye it is incumbent upon us to hear all of the facts and arguments on all sides, in order that these controversial issues may be fairly and objectively resolved not in the interest of this or that branch of the service but in the best interest of the people of the United States.

It is a great tirbute to this committee that it has functioned for 2 years without political partisanship. I assure you that so far as it lies within the power of the chairman it will continue to function as a nonpolitical committee and I know I will have the support of each and every member in seeing that this policy will always be maintained.

The composition of the committee has been fixed by the House as 19 for the majority and 14 for the minority. Following the custom and general practice of committees of the House, I have arranged to seat the majority on the right of the chairman and the minority on the left of the chairman.

I have set up on my own volition a policy committee to aid and assist me. This committee is composed of Mr. Brooks, Mr. Kilday, Mr. Durham, Mr. Sasscer, Mr. Short, Mr. Arends, Mr. Cole, and myself.

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After consultation with this group, we are submitting to the full committee for its consideration a resolution reelecting the staff of the Eightieth Congress in its entirety, both professional and clerical.

The policy group is also suggesting to you a proposal that the committee work be divided among three subcommittees to be headed respectively by Mr. Brooks, Mr. Kilday, and Mr. Durham. Each of these committees will consist of six members from the majority and five from the minority. They may be designated as Committee No. 1, Committee No. 2, and Committee No. 3, known as Mr. Brooks' subcommittee, Mr. Kilday's subcommittee, and Mr. Durham's subcommittee.

It is further proposed that these subcommittees shall have equal jurisdiction on all bills, and under the rules which have been drafted for your consideration by the policy committee, bills will be assigned to the various subcommittees by the chairman.

In the discharge of our duties, it may also be necessary from time to time, as the work load may require, to refer bills or special matters to temporary additional subcommittees created with the approval of the full committee.

Resolutions which will give effect to all these proposals have been drawn up and will be presented to you at the proper time for your consideration, with the hope that they will meet with your approval.

I am delighted to see so many members who served in the Eightieth Congress are still with us and I congratulate you gentlemen upon *having* been able to weather the political storm.

I want to take this opportunity to congratulate the new members who have been elected by the House to serve with us and welcome them as members of the Committee on Armed Services.

And I have the honor of introducing to you Mr. Fisher, of Texas.

Mr. Hardy, of Virginia.

Mr. Green, of Pennsylvania.

Mr. Doyle, of California.

Mr. deGraffenried, of Alabama.

Mr. Walsh, of Indiana.

Mr. Clemente, of New York.

Now, the first order of business is——

Mr. ARENDS. Mr. Chairman.

The CHAIRMAN. The gentleman from Illinois, Mr. Arends.

Mr. ARENDS. Mr. Chairman, I am sorry indeed that the ranking minority member, Mr. Short, is out of the city, and of course cannot be here. Let me just say that I have listened to the report of the chairman here and I hope I speak for the minority when I say we intend wholeheartedly to keep up the same type of cooperation on a nonpartisan basis that was prevalent here during the last session of the Congress, when we first had what was known as the Armed Services Committee.

It is our intent and our purpose to work with the chairman at all times for the best interests of our country and for our national security.

I cannot help but think of saying one more thing in relation to our former chairman, who did such an outstanding job during the last session of the Congress. In fact, I think Ham worked so hard that in part it did much to break down his health. It is regrettable indeed that it was necessary for him to retire. But he did an outstanding job and I hope, as the time goes on, he will have the self-satisfaction in his own mind and in his own being that it was a job well done and a

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Mr. ARENDS. Mr. Chairman.

The CHAIRMAN. The gentleman from Illinois, Mr. Arends.

Mr. ARENDS. Mr. Chairman, I am sorry indeed that the ranking minority member, Mr. Short, is out of the city, and of course cannot be here. Let me just say that I have listened to the report of the chairman here and I hope I speak for the minority when I say we intend wholeheartedly to keep up the same type of cooperation on a nonpartisan basis that was prevalent here during the last session of the Congress, when we first had what was known as the Armed Services Committee.

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sincere effort to try to lead the armed services ahead as he did. Mr. Chairman, it is a pleasure for us to be here this morning, and we are glad we are back on this committee to serve with you.

The CHAIRMAN. Thank you very much, Mr. Arends.

Mr. KILDAY. May I say a word, Mr. Chairman——

Mr. COLE. Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. Whether or not the time is appropriate at this moment, I do not know—I will leave it to the discretion of the chairman—but the Chair was so very gracious in his remarks with respect to the former chairman of the committee that I would like to suggest that the committee formally adopt a resolution requesting the clerk to communicate with the former chairman the expression made by the present chairman and the wishes of the committee for a speedy recovery.

The CHAIRMAN. Without objection, it is so ordered.

Mr. Kilday.

Mr. KILDAY. Mr. Chairman, I simply wanted to say that I thought the tribute you paid to our former chairman was most in keeping with the respect that we have for him. I think particularly at this time, when we have our new members with us, we can impress upon them the fact that there are no politics in the Armed Services Committee and I think that is proven by the fact that your policy committee is recommending that the entire staff, picked under Republican administration, be retained in the new Congress.

The CHAIRMAN. Thank you very much.

Now, I recognize Mr. Arends.

Mr. ARENDS. Mr. Chairman, I present the following resolution. Will somebody read it?

Mr. HARPER. Yes. [Reading:]

Resolved, That the Committee on Armed Services, House of Representatives, adopt the following rules governing the procedure for the committee:

"1. The Committee on Armed Services will meet every Tuesday at 10 a. m. and at such other times as may be fixed by the chairman or by the written request of a majority of the members of the committee.

"2. A Tuesday meeting of the committee may be dispensed with by the chairman, but such action may be reversed by a written request of a majority of the members.

"3. No general proxies may be used for any purpose. A member may vote by special proxy, which must be in writing, dated, signed by the member, and clearly identify the member to whom the proxy is given. The proxy must be filed with the clerk of the committee and must identify the particular bill or resolution and amendments thereto, motion, or other specific matter under consideration. A proxy may not be used for the purpose of establishing a quorum. A proxy may be used in subcommittee or the full committee.

"4. No measure or recommendation shall be reported or tabled by the committee unless a majority of the committee is actually present.

"5. A roll call of the members may be had upon the request of one or more members.

"6. The chairman shall have authority to refer all bills, resolutions, or other matters to any and all subcommittees or to the full committee. A subcommittee to which a bill, resolution, or other matter has been referred shall proceed with all possible diligence, if a majority of a quorum so directs, with appropriate inquiry, and report its findings and recommendations to the full committee, but the chairman of the full committee shall have authority to discharge a subcommittee from consideration of any bill, resolution, or other matter referred thereto and have such measure or matter considered by the full committee. A majority vote of a quorum of a subcommittee will be required to report a bill, resolution, or other matter to the full committee or to table any such measure or matter in the subcommittee.

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"7. The chairman and the ranking minority member shall serve as ex officio members of all subcommittees and shall have the right to vote on all matters before the subcommittees.

"8. Any member of the full committee may have the privilege of sitting with any subcommittee during its hearings or deliberations and participate therein but shall not have the authority to vote at such hearings or deliberations unless a member of such subcommittee.

"9. Reports and recommendations of a subcommittee shall not be considered by the full committee until after the intervention of three calendar days from the time the report is submitted and printed hearings thereon are available to the members, except that this rule may be waived by a two-thirds vote of a quorum of the committee.

"10. Bills will be taken up for hearing only when called by the chairman of the committee or subcommittee, or by a majority vote of a quorum of the committee or subcommittee. A majority of the committee shall constitute a quorum.

"11. When a witness is before the committee, members of the committee may put questions to the witness only when they have been recognized by the chairman for that purpose.

"12. Members of the committee will have not to exceed 10 minutes to question witnesses, except that this rule may be waived in the discretion of the chairman.

"13. Questions put to witnesses before the committee shall be pertinent to the bill or other subject matter that may be before the committee for consideration.

"14. The time any one member may address the committee on any bill, motion, or other matter under consideration by the committee will be limited to the 10 minutes, and then only when he has been recognized by the chairman, except that this time limit may be waived in the discretion of the chairman.

"15. A private bill will not be reported out by the committee if there are two or more dissenting votes. Once a private bill has been heard and rejected by the committee it will not be taken up again for consideration during the same Congress unless some new evidence sufficient to justify a rehearing has been presented to the committee.

"16. Except as otherwise specified, the rules of the House will govern the procedure of the committee when it is in session."

The CHAIRMAN. Now, members of the committee, these rules are practically the same rules that prevailed during the Eightieth Congress. There are a few little changes and those changes were carefully considered by the policy committee.

I think these rules are so drafted that we can dispose of business and at the same time properly and amply protect the rights of any minority views with respect to any question.

Is there any discussion on the rule?

Mr. HÉBERT. Mr. Chairman, may I ask a question for clarification?

The CHAIRMAN. The gentleman from Louisiana.

Mr. HÉBERT. In connection with the use of the proxy: It specifically says that the proxy will be used for a designated piece of legislation before the committee and that the individual shall designate the individual member to use that proxy.

The CHAIRMAN. Read the rule so we can understand it.

Mr. HÉBERT. Before you read it, Mr. Chairman, the point I direct myself to is: When the general bill, the specific piece of legislation, is before the entire committee and an individual has another member's proxy, has he the power to vote on amendments which will probably be brought to the attention of the committee at that particular time?

The CHAIRMAN. It all depends upon the authority given in the proxy. If the proxy designates bill H. R. 4678 and authorizes the member to vote on that bill and all amendments thereto as he sees best to vote, then he would have the authority to cast a vote on any amendment which might be considered.

Mr. HÉBERT. In other words, you cannot anticipate the amendment to be presented but the member having the proxy would have full authority to vote on the amendment if the proxy so states.

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The CHAIRMAN. If the proxy so states.

Mr. RIVERS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Rivers.

Mr. RIVERS. It is difficult to remember all those proposals. Have all members, particularly the new members, a copy?

Mr. HARPER. They have.

The CHAIRMAN. These rules will be printed. Each one has a copy now. They will be mailed to you and printed in the calendar. You will print them in the calendar?

Mr. HARPER. Yes, sir.

The CHAIRMAN. Any further questions on the rules?

Mr. KILDAY. May I say, Mr. Chairman, on the proxy situation: I have suggested that a form be printed so that we would have a definite, fixed form on which to proceed. We have been writing in the past on slips of paper and backs of cigarette books and everything else around here.

Mr. HÉBERT. I think that is a splendid idea.

The CHAIRMAN. The gentleman from California.

Mr. ANDERSON. Mr. Chairman, I simply wanted to inquire if the 10-minute limitation on time also applies to the chairman.

The CHAIRMAN. Oh, yes. But I trust that the chairman would be able at least to elicit information from the witnesses that would call for hesitancy on the part of the committee to give him any more latitude.

Now, any further questions on the adoption of the rules?

If not, the rules are adopted.

Now, I recognize Mr. Kilday for offering a resolution.

Mr. KILDAY. Mr. Chairman, I offer a resolution:

Resolved, That the following persons be and the same are hereby elected to the professional staff of the Committee on Armed Services, House of Representatives, pursuant and subject to Public Law 601 (79th Cong.), and the rules with amendments thereto (81st Cong.), to fill the following positions respectively, it being understood that according to the provisions of this law, the chairman will fix the basic salary per annum, and that letters in duplicate will be executed on behalf of the committee by the chairman and the ranking minority member and accepted by the employees, these agreements to be deposited in the safe of the committee:

John Russell Blandford, Buffalo, N. Y., professional staff.
Robert W. Smart, Aurora, Mo., professional staff.
Clinton B. D. Brown, New York, N. Y., professional staff.
Bryce N. Harlow, Oklahoma City, Okla., professional staff.

I move its adoption.

The CHAIRMAN. It is moved that the professional staff whose names have been read be elected by the full committee under the rules and regulations implementing the Reorganization Act as applicable to them.

Mr. JOHNSON. I second the motion.

The CHAIRMAN. I want to say this. I think of all committees in Congress we are the most fortunate as far as the professional staff is concerned. We have an outstanding, able professional staff. We are all acquainted with the work they did last year. They have performed their duties in a most faithful and efficient manner. They are willing to cooperate with each and every member.

Any time you gentlemen need them to carry on your legislative work in connection with your services on the committee, have no hesitancy in calling upon them. You will find them willing and you will find them exceedingly qualified to do what you desire done.

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Without objection, the professional staff is reelected.

Now, it is incumbent upon the Chair to fix the basic salary. I fix the basic salary of the professional staff at $8,000.

Now I recognize the gentleman from New York, Mr. Cole.

Mr. COLE. Mr. Chairman, I offer a resolution which I hand to the clerk, and move its adoption:

Mr. HARPER (reading):

Resolved, That the following persons be, and the same are hereby, elected to the clerical staff of the Committee on Armed Services, House of Representatives, pursuant and subject to Public Law 601 (79th Cong.), and the rules and amendments thereto (81st Cong.), to fill the following positions respectively, it being understood that according to the provisions of this law, the chairman will fix the basic salary per annum, and that letters in duplicate will be executed on behalf of the committee by the chairman and ranking minority member and accepted by the employees, these agreements to be deposited in the safe of the committee:

Robert H. Harper, Milledgeville, Ga., chief clerk.
James Deakins, Pikesville, Tenn., assistant clerk.
Agnes H. Johnston, Camillus, N. Y., secretary.
Rosemary Curry, Johnstown, Pa., stenographer.
Gladys Flanagan, Tyler, Tex., stenographer.
Berniece Kalinowski, North Judson, Ind., stenographer.

The CHAIRMAN. Anything to say with reference to retaining the clerical staff? You will find they also are very highly qualified.

Without objection, the sense of the full committee is expressed in electing the clerical staff.

Now, I have fixed the pay of the clerk, the base pay, at $8,000. The base pay of the stenographers is fixed at $3,080; the assistant clerk at $2,610; and Miss Johnston, the secretary, at $3,360.

Now, there is one member of the clerical staff who was employed by the investigating committee and its money ran out on the 3d day of January. She has been working here since the 3d day of January. I am asking authority to make the payment of her salary for the first part of January retroactive by giving her enough pay for the balance of January to make up for the time that she was not on the pay roll. Then her pay will go back to $3,080. That is the lady from Texas, Miss Flanagan.

Without objection, the Chair is authorized to follow the course just indicated.

Now, I will recognize the gentleman from North Carolina, Mr. Durham.

Mr. DURHAM. Mr. Chairman, I offer a resolution and move its adoption, which I hand to the clerk:

Mr. HARPER (reading):

Resolved, That in the employment of the professional and clerical staffs of this committee, the chairman and ranking minority member of the committee be authorized to sign agreements with the members of said staffs, which agreements shall be in duplicate and in the following form:

"_____, 194__.

"DEAR _____: This letter is to confirm our agreement with respect to the conditions of your employment as _____ by the Committee on Armed Services of the House of Representatives.

"As you know, your employment and service with the committee will at all times be subject to the provisions of the Legislative Reorganization Act of 1946 (Public Law 601, 79th Cong.), the rules of the House approving said act, with amendments thereto, or any authority vested in this committee or the chairman thereof by such act or rules.

"Your basic salary will be at the rate of $___ _____ per annum, which, together with increases provided by existing law, will in the aggregate amount to

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$_____ per annum. Said salary shall, of course, be subject to any withholding taxes required by law, or retirement deductions in the event you should elect to come under the provisions of the Civil Service Retirement Act.

"When your selection has been confirmed, as provided for in said Public Law 601, the term of your employment and other conditions thereof shall be subject to the said law, any amendments thereto, or rules of the House.

"In the event you should at any time desire to terminate your service with the committee, you are to give to the chairman at least 30 days' advance notice. Should it be necessary to dispense with your services, you are to be given similar notice, in which event you would be credited pro rata for any vacation time due you.

"Your vacation period shall be on the basis of 1 month per year of service, at such time as shall be approved by the chairman.

"Your signature below will indicate the acceptance of the above terms and conditions of your employment.

"Very truly yours,

"_____
"*Chairman.*

"_____
"*Ranking Minority Member.*"

The CHAIRMAN. Without objection on the part of the committee, Mr. Short and I will address that type of communication to each one of the professional and clerical staff.

Now I recognize Mr. Sasscer.

Mr. SASSCER. Mr. Chairman, I offer a resolution. I ask the clerk to read it.

The CHAIRMAN. This is a very important resolution. Pay strict attention.

Mr. HARPER (reading):

Resolved, That the Armed Services Committee of the House of Representatives be organized to consist of 3 subcommittees to be known as Subcommittee 1, Subcommittee 2, and Subcommittee 3, to be composed of 11 members each, 6 to represent the majority to be designated by the chairman, and 5 to represent the minority to be designated by the ranking minority member. The chairman of the committee and the ranking minority member of the committee shall serve as ex officio members on each subcommittee and shall have the right to vote and participate in all proceedings of the subcommittees. The next ranking member of each subcommittee shall be designated as vice chairman of said subcommittee.

All subcommittees shall have equal jurisdiction over all bills referred to the Armed Services Committee, but shall consider only such bills as are referred to them by the chairman of the full committee.

The subcommittee chairmen and members of the above enumerated subcommittees shall be as follows:

Subcommittee No. 1: Overton Brooks, chairman; L. Mendel Rivers, vice chairman; Philip J. Philbin; Arthur Winstead; Porter Hardy, Jr.; Edward deGraffenried; Paul W. Shafer; W. Sterling Cole; Jack Z. Anderson; Leon H. Gavin; Walter Norblad; Joseph R. Farrington.

Subcommittee No. 2: Paul J. Kilday, chairman; James J. Heffernan, vice chairman; Edward Hébert; Melvin Price; William J. Green, Jr.; John R. Walsh; George J. Bates; W. Sterling Cole; Charles H. Elston; Leroy Johnson; Harry L. Towe; Edward L. Bartlett.

Subcommittee No. 3: Carl Durham, chairman; Lansdale G. Sasscer, vice chairman; Franck Havenner; O. C. Fisher; Clyde Doyle; L. Gary Clemente; Leslie C. Arends; Charles H. Elston; J. Parnell Thomas; William W. Blackney; James E. Van Zandt; A. Fernós-Isern.

In addition to the above regular standing subcommittees, there shall be a policy subcommittee composed of the following members: Mr. Vinson, Mr. Brooks, Mr. Kilday, Mr. Durham, Mr. Sasscer, Mr. Short, Mr. Arends, Mr. Cole.

The subcommittees shall meet upon the call of the subcommittee chairmen.

The CHAIRMAN. Now, members of the committee, after much thought and after consultation with the policy committee, I am asking that we start our work in the manner indicated in the resolution. If we find that we cannot meet the problems that come before us in

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this manner, why, then, we will have another consultation about it and see what we can do to expedite consideration of the bills.

But I firmly believe that this method that is proposed is a very sound one. Each subcommittee will have complete jurisdiction of every bill. Bills will not be assigned on jurisdictional subjects. The bills will be assigned to the various subcommittees as always, taking into consideration the work load of that particular committee. Therefore, every member of the committee will become conversant with all the different phases of the armed services. I think that is a very desirable thing to bring about. Instead of members just becoming conversant with personnel legislation they will become conversant with all types of legislation—matériel, personnel, and any other subject matter that may be referred to them.

Now, if it so develops that we cannot turn out the business in this method, of course, we will have to make such changes as may be necessary.

And oftentimes there will be a great many bills relating to easements and matters of not very much importance and then I will ask the committee for the authority to designate a small group of members to consider such matters. I think if we start off in this way we will have a general knowledge of all phases of the services and every member will know something about each and every one of the branches of the service.

So I am hoping that you will adopt this resolution and let us see if this is not as sound a basis as any that can be thought of, for the time being, upon which to commence our work.

Any comments from any members of the committee? If not, the resolution presented by Mr. Sasscer is adopted.

Now, the next matter is the appointment of special subcommittees to handle approvals of disposals and leases under Public Law 289 of the Seventy-eighth Congress. Have you that resolution?

Mr. HARPER. Yes.

The CHAIRMAN. Read that resolution.

Mr. HARPER. The resolution is:

APPOINTMENT OF SPECIAL SUBCOMMITTEE TO HANDLE APPROVAL AND DISAPPROVAL OF LEASES UNDER PUBLIC LAW 289, SEVENTY-EIGHTH CONGRESS

Members of the committee, as most of you know, Public Law 289 of the Seventy-eighth Congress provides in part as follows:

"That prior to the acquisition or disposal, by lease or otherwise, of any land acquired for naval use under the authority of this, or any other Act, the Secretary of the Navy shall come into agreement with the Naval Affairs Committees of the Senate and of the House of Representatives with respect to the terms of such prospective acquisitions or disposals; and recital of compliance with this proviso in any instrument of conveyance by the Secretary of the Navy under authority of this or any other Act shall be conclusive evidence of the Secretary's compliance with this proviso as to the property conveyed."

During the Eightieth Congress, the approval of these leases was handled by Mr. Bates' subcommittee and I desire to appoint a special subcommittee to go over each of these leases and report their recommendations to the full committee. I designate the following members——

The CHAIRMAN. Wait 1 minute.

Mr. HARPER. Yes.

The CHAIRMAN. Now, is there any objection to having the authority to appoint a special subcommittee of four to pass upon the acquisitions and disposals and then report back to the full committee?

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Without objection, it is so ordered. The Chair shall have the authority to appoint a special committee of four.

Now read on.

Mr. HARPER (continuing reading):

I designate the following members to serve on such a subcommittee: Mr. Sasscer, Mr. Philbin, Mr. Cole, Mr. Bates, Mr. Vinson, and Mr. Short ex officio.

The CHAIRMAN. Now, in that connection, while this subject is up, I think it is highly important that we have our staff prepare a bill covering the Army and the Air Force with reference to all acquisitions and disposals of land and that we should have the same jurisdiction over those two Departments as well as over the Navy Department.

So I am asking Mr. Smart to prepare a bill for the consideration of the full committee at a later date.

Mr. KILDAY. May I suggest, Mr. Chairman, that we put that in some other legislation to avoid the possibility of veto?

The CHAIRMAN. Well, that might be a good idea. But it is sufficient to stand on its own merits. It is clearly within the authority of Congress to have a voice in disposals.

Now, there may be some doubt as to the constitutionality of acquisitions, but there is not any question as to disposals. Congress has always had the right to have a voice in disposals. Now of course the weakness of our position is that it is not Congress but it is the committee. That might raise a question. But we will cross that bridge when we get to it. So, Mr. Smart, fix up a bill and we will have that to consider.

Mr. SASSCER. Mr. Chairman.

The CHAIRMAN. Now, we will designate Mr. Brown, of the professional staff, to carry on this work as he did under Mr. Bates. I want to compliment you on your work and I hope your records are all up to date. I have not checked on it but I am trusting it is all right, so that we will all know what is going on.

Mr. SASSCER. Mr. Chairman, just to clarify that, I understand that this subcommittee is just for acquisitions and disposition of real estate.

The CHAIRMAN. That is right.

Mr. KILDAY. I might say I served on that committee for 2 years and I am glad Mr. Sasscer has that and not me.

The CHAIRMAN. Well, I think it is a fine control. I want this committee to have something to do with running the departments instead of the departments just telling the committee what they are going to do.

The next matter is the appointment of the special committee to handle the disposal of special properties by the Department of the Navy.

You see, gentlemen, a great many of these things relate specifically to the Navy because when we were guiding the destinies of the Navy we felt that the committee should have a hand in a great many things.

I feel that same way with reference to all of the armed services.

Mr. HARPER (reading):

Public Law 629, Seventy-ninth Congress, which provided for the disposition of vessels, trophies, relics, and material of historical interest by the Secretary of the Navy, contained a provision as follows:

"SEC. 6. No transfer, loan, or gift authorized by section 1 or 2 of this Act shall take effect until information of the proposal to make such transfer, loan, or gift has been transmitted to the Congress. The transfers authorized by section 1 of this Act shall take effect upon the expiration of the first period of sixty calendar days

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of continuous session of the Congress following the date on which information of the proposal to make such transfer is transmitted to the Congress; but only if, between the date of transmittal and the expiration of such sixty-day period there has not been passed by the two Houses a concurrent resolution stating in substance that the Congress does not favor the proposed transfer. The loans and gifts authorized by section 2 of this Act shall take effect upon the expiration of the first period of thirty calendar days of continuous session of the Congress following the date on which information of the proposal to make such loan or gift is transmitted to the Congress; but only if, between the date of transmittal and the expiration of such thirty-day period, there has not been passed by the two Houses a concurrent resolution stating in substance that the Congress does not favor the proposed loan or gift."

The CHAIRMAN. Is there any objection to appointing a subcommittee to consider these matters? If not, the Chair designates the following members to constitute this subcommittee.

Mr. HARPER (continuing reading):

Mr. Heffernan, Mr. Rivers, Mr. Winstead, Mr. deGraffenried, Mr. Walsh; Mr. Clemente, Mr. Elston, Mr. Leroy Johnson, Mr. Towe.

The CHAIRMAN. Now, the next matter is the appointment of a special subcommittee to handle miscellaneous reports to the committee required by the law.

Mr. HARPER (reading):

During the course of previous Congresses, the Military Affairs Committee and Naval Affairs Committee have written provisions into various acts of Congress requiring the submission of annual and semiannual reports covering a number of items.

In addition, the Departments, of their own volition, from time to time send reports to the committee.

In order that each of these reports may be carefully studied, I desire to designate a special subcommittee for their consideration.

The CHAIRMAN. Any objection to designating this subcommittee? If not, I designate the following members.

Mr. HARPER (continuing reading):

Mr. Hébert, Mr. Havenner, Mr. Price, Mr. Fisher, Mr. Hardy, Mr. Green, Mr. Doyle, Mr. Anderson, Mr. Shafer, Mr. Norblad, Mr. Van Zandt, Mr. Vinson, and Mr. Short ex officio.

Special reports already on file with the committee are:

1. Report from the Secretary of Defense setting forth the number of positions established pursuant to Public Law 313, Eightieth Congress, in the National Military Establishment during that calendar year, and the name, rate of compensation, and description of qualifications of each incumbent together with a statement of the functions performed by each.
2. First report of the Secretary of Defense.
3. Annual report of the Secretary of the Navy.
4. Annual report of the Secretary of the Air Force.
5. Report from the Secretary of Interior showing the amount of moneys credited to helium production fund and the amount of disbursements made therefrom during the preceding fiscal year, and the unexpended and unobligated balances on hand in such fund as of the end of such fiscal year.
6. Report from the National Advisory Committee for Aeronautics showing contracts negotiated by NACA.
7. Report from the Secretary of the Navy for the period ending June 30, 1948, of real and personal property leased by the Department of the Navy.
8. Report from the Secretary of the Army showing transportation provided for certain Government and other personnel.
9. Report from the Secretary of the Navy showing transportation provided for certain Government and other personnel.
10. Report from the Secretary of Defense listing the contracts for research and development and industrial mobilization awarded by the Departments of the National Military Establishment from May 19, 1948, through June 30, 1948.

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11. Report from the Secretary of Navy listing officers above the rank of major in the Army or lieutenant commander of the Navy with the average monthly flight pay authorized by law to be paid to such officers.

The CHAIRMAN. Now, members of the committee, that completes the organizational resolutions that it is essential to adopt.

Mr. COLE. Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. Mr. Chairman, in connection with the subcommittee that the Chair has just announced, to my mind it is probably the most important subcommittee of the entire group. I am just wondering what plans the Chair has with respect to studies of these reports, whether one member of the professional group would be assigned to this committee or whether the reports would be parceled out to various members of the staff.

The CHAIRMAN. What method did you follow last year, Mr. Harper?

Mr. HARPER. Well, we had a little different procedure because we referred these to the standing subcommittees which had jurisdiction. Thus, transfers of vessels were referred to Mr. Hess' subcommittee and the smaller items went to Mr. Anderson's subcommittee.

The CHAIRMAN. This is a very important committee and I suggest that Mr. Blandford be requested to consider all these reports.

Mr. COLE. Mr. Chairman, it seems to me it is too big a load for any one staff member to handle.

The CHAIRMAN. Well, after we read the various Secretaries' reports, we will have a pretty good idea what they want. I finished Mr. Forrestal's report. I am now reading Mr. Symington's. It is entirely left to the desire of the members whether or not they wish to go into these reports. We would not ask them to read them all. I am afraid a great many of you do not have time to read even the reports of the Naval Academy and West Point.

Mr. JOHNSON. Mr. Chairman.

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. Will the group also furnish a summary of these reports for the rest of us?

The CHAIRMAN. Yes; we will have all that done and broken down.

Mr. Blandford, you try to help out on this as much as you can.

Mr. BLANDFORD. All right, sir.

The CHAIRMAN. Now, members of the committee, that finishes the necessary resolutions relating to the organization.

Now, I would like the clerk to have the stationery printed and after it is printed I would like to have you parcel some of it out to each of the members of the committee so that they can have committee stationery on which to write letters relating to committee matters.

Now, another thing: It is left with the committee to select the reporter, isn't it?

Mr. HARPER. Yes, sir.

The CHAIRMAN. Now, you reported last year and if there is no objection—you did a very fine job and I hope you can continue to report for us this session——

Mr. COLE. Mr. Chairman, for information, is it the responsibility of the committee, the majority of the committee, to pick the reporter? It seems to me that is the prerogative of the chairman and, if so, I do not like to have a precedent established.

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The CHAIRMAN. Then, I will pick him.

Old boy, you can stay here as long as you deliver the goods.

Now, members of the committee, the armed services at the Pentagon desire that the committee meet with them tomorrow at 10 o'clock for a briefing which they desire to give with reference to the national defense. It is a very important meeting. They will furnish transportation from here to the Pentagon. The House does not have anything on the calendar. So it will probably take two and a half hours or a little bit longer.

And lunch will be served over there. It is one of the most important meetings that will take place in many months and it is highly secret.

Members must not divulge anything that is said over there. If it meets with the approval of the committee, those who want to go will be here in the morning promptly at 10 o'clock.

Mr. HARPER. 9:30, sir.

The CHAIRMAN. 9:30. I wish every member to be on hand.

Mr. HARPER. The transportation will wait downstairs between these two buildings right outside this window.

Mr. RIVERS. Whose office are we going to?

Mr. HARPER. Forrestal's.

The CHAIRMAN. Every one of you gentlemen try to be on hand. You will meet at the foot of the steps. Then we will go over there.

Now, how many members can indicate now that they desire to go? (Hands raised.)

The CHAIRMAN. I want every member to go, because the policy committee has gone over this briefing in advance. We know what they are going to say in a general way. It is highly secret and must be strictly confidential.

There must be no leaks. The professional staff, with the clerk, is also invited.

Now, on Thursday we will start a hearing by the full committee on H. R. 1437, a bill setting up the composition of the Army and the Air Force. The departments have only sent up four bills. They were introduced yesterday by Mr. Kilday, Mr. Cole, Mr. Brooks, and Mr. Durham, and they have been assigned to the different subcommittees.

So unless the departments send up something, we are not going to be quite as busy right now as we have been in the past in the beginning of a session, when you consider that we passed 128 laws last year.

We dotted every "i" and crossed every "t" that the services could think of, in addition to writing some very fundamental legislation.

So if there is nothing——

Mr. ARENDS. Could I ask one thing?

The CHAIRMAN. The gentleman from Illinois.

Mr. ARENDS. One thing came to my desk and I have not looked at it carefully. The committee was invited to go to Aberdeen or some place, on the 31st of January.

Mr. HARPER. I have not heard of it.

Mr. ARENDS. I do not have to pay any attention to it.

The CHAIRMAN. The Air Force wants the committee to go over here to Patuxent at a little later date to witness some sort of demonstration. We will get around to that.

Mr. RIVERS. Mr. Chairman.

The CHAIRMAN. Mr. Rivers.

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Mr. RIVERS. What is the position of the policy committee or the full committee with respect to bills introduced by members?

The CHAIRMAN. I wrote the Department yesterday and sent them—how many bills?

Mr. HARPER. One hundred and six bills.

The CHAIRMAN. I went to see Forrestal yesterday—I sent him 106 bills—and told him if reports were not back here by the 5th day of March we would start hearings irrespective of the reports.

Now, I did that for the purpose of enforcing upon the departments the necessity for reaching a decision and giving us the benefit of their views.

I do not think we will have to have hearings on more than one or two bills without having received reports from the departments. They must answer these letters and give reports—yes or no—in a reasonable length of time. I think 30 days for the 106 bills is ample time.

Mr. RIVERS. Thank you, sir.

The CHAIRMAN. Now, is there anything further any members want to bring before the committee?

Mr. ANDERSON. Mr. Chairman.

The CHAIRMAN. Mr. Anderson.

Mr. ANDERSON. I am sure I speak for the minority when I express the appreciation of those sitting to the Chairman's left for the very kind reference to the work done during the Eightieth Congress. We did not hear much of that during the past few months.

The CHAIRMAN. One minute. There is a report submitted by Mr. Anderson with reference to an investigation into the operation of Navy Ships Service Stores. I ask that the report be printed. It is a very fine report.

The CHAIRMAN. Anything else from the committee?

If not, we will recess until tomorrow morning at 9:30 to proceed to the office of the Secretary of Defense.

(Whereupon, the committee adjourned.)

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FEB 22 '49

[No. 2]

STATUS OF THE NATIONAL MILITARY ESTABLISHMENT AS OF DECEMBER 1, 1948

STATISTICAL DATA RELATING TO STATIONS AND FACILITIES, PERSONNEL, AIRCRAFT, SHIPS, EQUIPMENT AND MATÉRIEL

COMPILED BY

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

UNITED STATES
GOVERNMENT PRINTING OFFICE
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PART I

OFFICE OF SECRETARY OF DEFENSE

JOINT CHIEFS OF STAFF
RESEARCH AND DEVELOPMENT BOARD
MUNITIONS BOARD
ARMED SERVICES PETROLEUM BOARD

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PART I. OFFICE OF SECRETARY OF DEFENSE

PERSONNEL DATA

1. *Give the number of officers (by grade) and enlisted personnel assigned to the Office of Secretary of Defense.*

Military personnel:	
Commissioned officers	26
Warrant officers	3
Enlisted	20
Total	49

By grade and service

	Army	Navy	Air Force	Marine Corps
Major general	1			
Rear admiral		1		
Brigadier generals	2		3	
Colonels	3		1	
Captains		3		
Lieutenant colonels	5		1	
Majors	1			
Lieutenant commanders		2		
Captains	1			1
Lieutenants		1		
Total commissioned officers	13	7	5	1
Chief warrant officers	1	1		
Warrant officers (junior grade)			1	
Total warrant officers	1	1	1	
Grade 1	1	8	2	1
Grade 2		2	2	1
Grade 3	1		1	
Grade 4			1	
Total enlisted	2	10	6	2
Total military personnel	16	18	12	3

2. *Give the number of civilian employees assigned to the Office of Secretary of Defense.*

Answer: 305 civilian personnel are assigned to the Office of the Secretary of Defense.

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3. *Give the number of military (by grade) and civilian personnel assigned to the various boards and agencies under control of the Secretary of Defense.*

JOINT CHIEFS OF STAFF (INCLUDING THE JOINT STAFF)

Military personnel:

Commissioned officers	160
Enlisted	51
Total	211

By grade and service

	Army	Navy	Air Force	Marine Corps
Admiral		1		
Lieutenant generals	1		1	
Major generals	3		2	
Rear admirals		3		
Brigadier generals	2		1	
Colonels	21		28	5
Captains		20		
Lieutenant colonels	16		5	1
Commanders		12		
Majors	8		11	2
Lieutenant commander		1		
Captains	2		1	
Lieutenants		5		
First lieutenants	3		2	1
Lieutenant (junior grade)		1		
Second lieutenant	1			
Total commissioned officers	57	43	51	9
Grade 1	13	3	4	
Grade 2	11		1	
Grade 3	9	1	4	
Grade 4	2		3	
Total enlisted	35	4	12	
Total military personnel	92	47	63	9

Civilian personnel 167

RESEARCH AND DEVELOPMENT BOARD

Military personnel:

Commissioned officers	54
Enlisted	1
Total	55

By grade and service

	Army	Navy	Air Force	Marine Corps
Rear admiral		1		
Brigadier generals	1		1	
Colonels			7	
Captain		1		
Lieutenant colonels	12		4	
Commanders		6		
Majors	6		3	1
Lieutenant commanders		7		
Captains	1		1	
First lieutenant			1	
Lieutenant (junior grade)		1		
Total commissioned officers	20	16	17	1
Grade 3				1
Total enlisted				1
Total military personnel	20	16	17	2

Civilian personnel 236

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MUNITIONS BOARD

Military personnel:	
Commissioned officers	77
Enlisted	0
Total	77

By grade and service

	Army	Navy	Air Force	Marine Corps
Lieutenant generals	1			
Major generals	1		1	
Rear admiral		1		
Colonels	8		9	1
Captains		10		
Lieutenant colonels	9		10	1
Commanders		10		
Majors	3			1
Lieutenant commanders		2		
Captains			6	
Lieutenants		1		
First lieutenants			2	
Total commissioned officers	22	24	28	3
Total military personnel	22	24	28	3

Civilian personnel	322

ARMED SERVICES PETROLEUM BOARD

Military personnel:	
Commissioned officers	24
Warrant officers	1
Enlisted	0
Total	25

By grade and service

	Army	Navy	Air Force	Marine Corps
Colonels			2	
Captains		2		
Lieutenant colonels	1		2	1
Commanders		3		
Majors	6		3	
Lieutenant commanders		2		
Captains	1		1	
Total commissioned officers	8	7	8	1
Chief warrant officer		1		
Total military personnel	8	8	8	1

Civilian personnel	37

Grand total, Office, Secretary of Defense (including boards and agencies)

Military personnel:	
Commissioned officers	341
Warrant officers	4
Enlisted	72
Subtotal	417
Civilian personnel	1,067
Total	1,484

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PART II

DEPARTMENT OF THE ARMY

STATIONS AND FACILITIES
PERSONNEL
EQUIPMENT AND MATÉRIEL

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PART II. DEPARTMENT OF THE ARMY

STATIONS AND FACILITIES

1. *Submit by State and by location in each State all property owned by or under the jurisdiction of the Army. Identify the use to which each such piece of property is being put.*

Answer: This information is so voluminous that it is considered inadvisable to include it in this summarized report. However, the information is on file with the Chief Clerk and may be obtained from him by members of the committee.

2. *List Army installations beyond the continental limits, the mission of each, and the strength of their complements.*

Answer: For reasons of military security the rather extensive list of these installations and the other data requested cannot be printed in this report for public distribution. However, the information has been furnished to the committee and is on file with the Chief Clerk. It may be obtained from him by members of the committee.

PERSONNEL [1]

1. *Give the present authorized and actual strength (as of December 1, 1948) of officers and enlisted personnel in the Army.*

	Officers	Enlisted men	Aggregate
Authorized strength of the Army (no authorized break-down)			837,000
Plus 1-year trainees			110,000
Total			947,000
Budget appropriation as of Jan. 1, 1949	90,000	618,000	708,000
Command strength as of Nov. 1, 1948 [2]	72,936	573,926	646,862

[1] Where data as of Dec. 1, 1948, is not yet obtainable, the latest available figures have been submitted.
[2] Command strength includes all officers, both Army and Air Force, on duty with the Army. It is the basis used for strength accounting purposes.

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2. *Give the number of officers in each grade (permanent and temporary).*

Command strength, officers by grade in which serving as of Nov. 1, 1948

	Regular Army	Other	Total		Regular Army	Other	Total
Generals of the Army	2	-------	2	Majors	4,891	6,086	10,977
Generals	7	-------	7	Captains	4,547	17,081	21,628
Lieutenant generals	22	2	24	First lieutenants	2,729	19,178	21,907
Major generals	144	7	151	Second lieutenants	536	2,832	3,368
Brigadier generals	191	2	193	Warrant officers	246	2,971	3,217
Colonels	340	267	3,307				
Lieutenant colonels	5,663	2,492	8,155	Total	22,018	50,918	72,936

Departmental strength, Regular Army officers by permanent grade as of Nov. 1, 1948 [1]

Generals of the Army	2	Captains	6,673
Major generals	101	First lieutenants	5,046
Brigadier generals	106	Second lieutenants	1,196
Colonels	2,076	Warrant officers	243
Lieutenant colonels	2,684		
Majors	4,499	Total	22,626

[1] This tabulation is on a departmental rather than a command basis. The discrepancy of 608 officers represents the difference between the number of Army officers on duty with the Air Force and the number of Air Force officers on duty with the Army. The permanent grades of non-Regular officers are not shown because these officers hold their permanent grades in their respective components and not in the Regular Army.

3. *Give the number of officers and enlisted personnel serving overseas (by theater).*

Army command strength—Strength of overseas personnel as of Nov. 1, 1948

	Officers	Enlisted	Total
U. S. Army Forces, Far East	12,097	117,912	130,009
U. S. Army, Pacific	975	7,299	8,274
U. S. Army, Alaska	510	5,481	5,991
U. S. Army, Europe	9,550	76,184	85,734
Trieste United States troops	364	4,534	4,898
U. S. Army, Caribbean	1,526	12,963	14,489
Foreign assignment personnel	1,767	4,397	6,164
En route on ship from United States	572	6,220	6,792
Total	27,361	234,990	262,351

4. *Give the number of officers (by grade) and enlisted personnel serving in the Department of the Army, Washington, D. C., as of December 1, 1948.*

Personnel serving in military district of Washington as of Nov. 1, 1948

OFFICERS		ENLISTED	
Generals	123	Grade 1	786
Colonels	776	Grade 2	807
Lieutenant colonels	1,393	Grade 3	1,384
Majors	1,238	Grade 4	2,282
Captains	1,198	Grade 5	2,719
First lieutenants	869	Grade 6	3,423
Second lieutenants	86	Grade 7	3,048
Warrant officers	129		
Total	5,812	Total	14,449

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5. *Give the number of officers and enlisted personnel serving in the continental United States other than in the Department of the Army, Washington, D. C.*

Personnel serving in continental United States (excluding military district of Washington) as of Nov. 1, 1948

OFFICERS		ENLISTED	
Generals	118	Grade 1	16, 988
Colonels	1, 677	Grade 2	15, 821
Lieutenant colonels	4, 449	Grade 3	28, 393
Majors	6, 074	Grade 4	40, 446
Captains	12, 039	Grade 5	45, 815
First lieutenants	11, 633	Grade 6	52, 438
Second lieutenants	2, 378	Grade 7	124, 586
Warrant officers	1, 395		
Total	39, 763	Total	324, 487

6. *Give the number of civilian employees in the Department of the Army, Washington, D. C.*

Answer: 13,825 civilian employees were assigned to the Department of the Army, Washington, D. C., as of November 1, 1948.

7. *Give the number of civilian employees of the Army in the United States.*

Answer: 305,465 civilian employees were assigned to the Department of the Army in the United States as of November 1, 1948.

8. *Give the strength of the Army's civilian components, divided into National Guard and Reserves, and dividing the Reserves into active and inactive.*

Strength of civilian components as of Nov. 1, 1948

Component	*Strength (officers and enlisted men)*
National Guard	270, 787
Organized Reserves	748, 068
Active tables of organization and equipment units	149, 697
Active training units	3, 719
Active T/D units	318
Active composite groups	303, 393
Active attached for training	180
Inactive (not receiving training), unassigned	290, 761

9. *Give the number of persons receiving ROTC training as of December 1, 1948.*

Number of persons receiving ROTC training as of the beginning of the school year 1948–49

	Enrollment
Junior ROTC units	54, 877
Senior ROTC units	98, 351
Total	153, 228

10. *List institutions where Army ROTC training is being conducted and the number assigned to each institution.*

Answer: This information is too voluminous to include in this summarized report. However, the information is on file with the Chief Clerk and may be obtained from him by members of the committee.

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11. *Give the authorized strength of the Military Academy, its actual cadet strength as of December 1, 1948, and the anticipated strength of the graduating class.*

Authorized strength of the U. S. Military Academy	2,446
Actual strength Dec. 1, 1948	2,434
Anticipated graduating strength	576

12. *Give the Army's division strength as of December 1, 1948, where such divisions are located in the world, and what units are available as a striking force.*

Answer: For reasons of military security this data cannot be printed for public distribution in this report. However, it is available to committee members upon request of the Chief Clerk.

Equipment and Matériel

1. *Advise as to the adequacy of reserves of equipment and strategic matériel, indicating whether the supply of such stocks is adequate to support 3 months, 6 months, 9 months, or 12 months of warfare without replenishment.*

Answer: For reasons of military security this data cannot be printed for public distribution in this report. However, it is available to committee members upon request of the Chief Clerk.

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PART III

DEPARTMENT OF THE NAVY

STATIONS AND FACILITIES
PERSONNEL
SHIPS
NAVAL AVIATION
EQUIPMENT AND MATÉRIEL

85266—49—No. 2——3

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Part III. Department of the Navy

Stations and facilities

1. *Submit by State and by location in each State all property owned by or under the jurisdiction of the Navy. Identify the use to which each such piece of property is being put.*

Answer: This information is so voluminous that it is considered inadvisable to include it in this summarized report. However, the information is on file with the Chief Clerk and may be obtained from him by members of the committee.

2. *List the naval bases beyond the continental limits, the mission of each, and the strength of their complements.*

Answer: Data on the missions and strength of the complements of these extracontinental bases are on file with the Chief Clerk and may be obtained from him by members of the committee. The location of these bases is as follows:

Atlantic (other than air bases):
- San Juan, P. R.
- Guantanamo, Cuba
- Trinidad, British West Indies
- Roosevelt Roads, P. R.
- Balboa, C. Z.
- Coco Solo
- Argentia
- Greenland
- Port office, United Kingdom
- Advance base, Bremerhaven
- Communication units, Jerusalem

Pacific (other than air bases):
- Pearl Harbor
- Midway
- Subic Bay
- Adak
- Kodiak
- Guam
- Saipan
- Kwajalein
- Samoa
- Japan (Sasebo, Yokosuka)
- China (Shanghai, Tsingtao)

CB's Atlantic:
- Roosevelt Roads, P. R.
- Trinidad
- Argentia
- Bermuda
- London
- Greenland

CB's Pacific:
- Guam
- Subic Bay
- Adak
- Saipan
- Midway
- Sangley Point
- Kwajalein
- Tsingtao
- Okinawa

Atlantic (air bases):
- San Juan
- Roosevelt Roads, P. R.
- Bermuda
- Guantanamo Bay
- Trinidad
- Coco Solo
- Greenland
- Argentia

Pacific (air bases):
- Hawaii
- Midway
- Sangley Point, P. I.
- Manila
- Attu
- Kodiak
- Marianas
- Guam
- Kwajalein
- Saipan
- Shanghai
- Okinawa

3. *List the continental and extracontinental naval air facilities with their missions.*

Answer: The naval air facilities beyond the continental limits cannot be listed for reasons of security, nor can the missions of the continental and extracontinental installations. However, this data

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is available to committee members upon request of the chief clerk. The continental air facilities of the Navy, by State, are as follows:

STATE AND STATION

Alabama:
- NAS, Birmingham
- NAAS, Barin

Arizona: NAF, Litchfield Park

California:
- NAS, San Diego
- NAAS, Ream Field
- NAS, El Centro
- NAS, Santa Ana
- NAAS, Miramar
- MCAS, El Toro
- NAF, Inyokern (BuOrd)
- NAS, Los Alamitos
- NAMTC, Point Mugu
- NAS, Moffett Field
- NAAS, Monterey
- NAS, Alameda
- NAS, Oakland
- NAAS, Brown
- NAAS, Crows Landing
- MCAAS, Gillespie
- NAS, Livermore
- NAAS, San Clemente
- NAAS, San Nicholas
- NAAS, Santa Rosa
- NAAS, Vernalis

Colorado: NAS, Denver

Florida:
- NAS, Jacksonville
- NAAS, Cecil Field
- NAS, Key West
- NAS, Miami
- NAS, Pensacola
- NAAS, Corry Field
- NAAS, Saufley Field
- NAAS, Whiting Field
- NAAS, Bronson
- NAAS, Ellyson
- NAS, Fort Lauderdale
- NAS, Richmond

Georgia:
- NAS, Atlanta
- NAF, Glynco

Illinois: NAS, Glenview

Indiana: NAS, Bunker Hill

Iowa: NAS, Ottumwa

Kansas:
- NAS, Olathe
- NAS, Hutchinson

Louisiana:
- NAS, New Orleans
- NAS, Houma

Maine:
- NAS, Brunswick
- NAAS, Casco Bay

Maryland:
- NAF, Annapolis
- NATC, Patuxent (including NAS, Patuxent)

Massachusetts:
- NAS, Squantum
- NAF, South Weymouth
- NAAS, Marthas Vineyard

Michigan: NAS, Grosse Ile

Minnesota: NAS, Minneapolis

Missouri: NAS, St. Louis

Nebraska: NAS, Lincoln

Nevada: NAAS, Fallon

New Jersey:
- NAS, Atlantic City
- NAS, Lakehurst (LTA)

New York:
- NAS, New York
- NAS, Niagara

North Carolina:
- MCAS, Cherry Point
- NAF, Weeksville
- MCAAS, Atlantic
- MCAAS, Bogue
- MCAS, Edenton
- NAAS, Harvey Point
- MCAS, Oak Grove

Ohio:
- NAS, Columbus
- NAS, Akron

Oregon: NAS, Tillamook

Pennsylvania:
- NAMC, Philadelphia (including NAAS, Mustin)
- NADS, Johnsville
- NAS, Willow Grove

Rhode Island:
- NAS, Quonset Point
- NAAS, Charlestown

South Carolina:
- MCAAS, Congeree
- MCAS, Parris Island

Tennessee:
- NAS, Memphis
- NATTC, Memphis

Texas:
- NAS, Corpus Christi
- NAAS, Cabaniss
- MCAS, Eagle Mountain Lake
- NAAS, Cuddihy
- NAF, Hitchcock
- NAAS, Kingsville
- NAAS, Waldron
- NAAS, Chase
- NAAS, Rodd

Virginia:
- NAS, Norfolk
- NAAS, Oceana
- NAAS, Chincoteague
- NAF, Dahlgren
- MCAS, Quantico
- NAAS, Monogram
- NAAS, Creeds
- NAAS, Fentress
- NAAS, Pungo

Washington:
- NAS, Seattle
- NAS, Whidbey Island
- NAS, Spokane

Washington, D. C.: NAS, Anacostia

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PERSONNEL

1. *Give the present authorized and actual strength (as of December 1, 1948) of officers and enlisted personnel in the Navy.*

Answer: As of November 30, 1948, authorized and actual strengths (preliminary) of naval personnel on active duty were as follows:

	Authorized	Actual
Active Regular Establishment:		
Officers, line and staff, including nurses	51,664	42,021
Warrant officers	[1] 4,218	3,989
Enlisted	500,000	375,125
1-year trainees: Enlisted	30,000	8,782
Continuous active duty under appropriation "Naval Reserve":		
Officers	1,380	1,283
Enlisted	12,723	12,288
Officer candidates:		
Midshipmen (Naval Academy)	[2] 4,402	3,307
Midshipmen (aviation)	----------	2,283
NavCads	----------	132

[1] This figure is actual number of CWO and WO on the active list of the Navy on Jan. 1, 1948. Statutory law does not prescribe an authorized number of CWO and WO. The number is governed by appropriation limitations.

[2] Includes 26 from other American Republics as designated by the President.

2. *Give the number of officers in each grade (permanent and temporary).*

Answer: The number of officers in each grade of the active Regular Establishment on October 31, 1948, the latest date for which detailed information is available, was as follows:

Rank	Active Regular Establishment, present grade	Active Regular USN		All other USNR, USN (ret) USN-T	
		Present grade	Permanent grade	Present grade	Permanent grade
Fleet admirals	3	3	3	0	0
Admirals	6	6	0	0	0
Vice admirals	20	19	0	1	0
Rear admirals	215	210	166	5	5
Commodores	4	1	0	3	0
Captains	2,478	2,338	1,534	140	56
Commanders	4,511	4,064	3,056	447	194
Lieutenant commanders	6,220	4,746	5,149	1,474	856
Lieutenants	9,992	5,078	6,533	4,914	1,341
Lieutenants (junior grade)	11,914	5,324	5,327	6,590	2,509
Ensigns	6,296	4,714	4,735	1,582	1,740
Chief warrant officers	3,167	584	542	2,583	2,690
Warrant officers	843	155	197	688	193
Enlisted	----------	----------	----------	----------	8,843
Total	45,669	27,242	27,242	18,427	18,427

In addition to the above, the following Naval Reserve officers were on continuous active duty under appropriation Naval Reserve on October 31, 1948:

	Present grade	Permanent grade		Present grade	Permanent grade
Rear admirals	1	0	Ensigns	24	642
Captains	34	3	Chief warrant officers	40	11
Commanders	212	26	Warrant officers	11	44
Lieutenant commanders	479	114			
Lieutenants	292	199	Total	1,283	1,283
Lieutenants (junior grade)	190	244			

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3. *Give the number of officers and enlisted personnel serving at sea.*

Answer: On October 31, 1948, the latest date for which detailed information is available, naval personnel were serving afloat and ashore outside the United States as follows:

	Afloat	Ashore outside United States	Total
Officers	14,448	4,547	18,995
Enlisted	174,353	38,074	212,427
1-year trainees	100	0	100
Midshipmen (aviation)	257	5	262

In addition to the above, the following personnel on continuous active duty under appropriation Naval Reserve were serving ashore outside the United States:

Officers	1
Enlisted	10

NOTE.—The information given above is the physical location of the personnel listed. Fleet commands administer many activities in continental United States such as amphibious training bases and fleet training centers, and personnel attached to such activities are not considered to be at sea and are not included in above tabulation.

4. *Give the number of officers (by grade) and enlisted personnel assigned to continental shore duty (other than in the Navy Department, Washington, D. C.)*

Answer: On October 31, 1948, the latest date for which detailed information is available, the following naval personnel were assigned to duty within the continental limits of the United States. Those assigned to the Navy Department are excluded:

	Active Regular Establishment	Continuous active duty under appropriation "Naval Reserve"		Active Regular Establishment	Continuous active duty under appropriation "Naval Reserve"
Fleet admirals	1	----	Ensigns	2,443	23
Admirals	2	----	Chief warrant officers	1,432	38
Vice admirals	5	----	Warrant officers	440	10
Rear admirals	83	----			
Commodores	1	----	Total	24,350	1,172
Captains	1,393	26	Enlisted	160,165	12,246
Commanders	2,528	184	Midshipmen (aviation)	2,021	----
Lieutenant commanders	3,644	438	Midshipmen (Naval Academy)	3,307	----
Lieutenants	5,814	278	Naval cadets	132	----
Lieutenants (junior grade)	6,564	175			

NOTE: The above tabulation denotes the physical location of the personnel listed as explained under question No. 3.

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5. *Give the number of officers (by grade) and enlisted personnel assigned to the Navy Department, Washington, D. C.*

Answer: As of October 31, 1948, the latest date for which detailed information is available, officers and enlisted personnel were assigned to the Navy Department as follows:

	Active Regular Establishment	Continuous active duty under appropriation "Naval Reserve"		Active Regular Establishment	Continuous active duty under appropriation "Nava Reserve"
Fleet admirals	1	----	Lieutenants (junior grade)	206	15
Admirals	1	----	Ensigns	17	1
Vice admirals	7	----	Chief warrant officers	34	2
Rear admirals	70	1	Warrant officers	11	1
Commodores	2	----			
Captains	475	8	Total	2,324	110
Commanders	615	27	Enlisted	1,208	32
Lieutenant commanders	538	41			
Lieutenants	347	14			

6. *Give the number of civilian employees of the Department of the Navy.*

Answer: The number of civilian employees of the Department of the Navy, including the Marine Corps, is 363,549 (outside United States, as of November 1, 1948; all others as of December 1, 1948).

7. *Give the number of civilian employees in the Navy Department, Washington, D. C.*

Answer: The number of civilian employees in the Navy Department, Washington, D. C., including the Marine Corps, is 12,173 as of December 1, 1948.

8. *Give the number of civilian employees of the Navy outside the United States.*

Answer: The number of civilian employees of the Navy outside the United States, including the Marine Corps, is 42,621 as of November 1, 1948.

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9. *Give the officer and enlisted strength of the various Reserves of the Navy.*

Answer: The estimated strength of the Naval Reserve as of November 30, 1948, was as follows (these figures subject to revision upon receipt of complete reports):

	Officers	Enlisted
Organized reserve (including organized unit instructors and volunteers associated in a nondrill pay status):		
Surface, subs, and other components, less aviation	14,553	148,456
Aviation	8,798	20,566
Total organized Reserve	23,351	169,022
Other Reserve components:		
Volunteer drilling programs in nondrill pay status	31,645	23,588
Inactive volunteer pool	221,043	499,042
Active duty under appropriation NR	1,271	12,288
Active duty under appropriation PSNP	6,799	1,209
Nurse Corps Reserve:		
Inactive	5,395	
Active PSNP	232	
Active NR	12	
Total other Reserve components	266,397	536,127
Total Naval Reserve for planning requirements	289,748	705,149
Reserve components not included in planning requirements and with unlimited enrollment:		
Merchant Marine Reserve	13,319	
Fleet Reserve	134	16,948
Honorary retired list	715	44
Total components not included in planning requirements	14,168	16,992
Grand total Naval Reserve	303,916	722,141
	1,026,057	

10. *Give the number of persons receiving Naval ROTC training as of December 1, 1948.*

Answer: As of December 1, 1948, the following personnel were receiving NROTC training:

Regular	5,562
Contract	4,074
Total	9,636

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11. *List the institutions where Navy ROTC training is being conducted, the number assigned to each institution and whether or not the training is being conducted under the Holloway Plan.*

Answer: The following tabulation shows the 52 NROTC institutions and the number of regular (Holloway plan) and contract students enrolled in each institution:

	Regular (Holloway Plan)	Contract	Total
1. Alabama Polytechnic Institute, Auburn, Ala	106	89	195
2. Brown University, Providence, R. I	127	110	237
3. California, University of, Berkeley, Calif	105	147	252
4. California, University of, at Los Angeles, Los Angeles, Calif	77	65	142
5. Colorado, University of, Boulder, Colo	113	82	195
6. Columbia University, New York, N. Y	109	65	174
7. Cornell University, Ithaca, N. Y	114	105	219
8. Dartmouth College, Hanover, N. H	107	93	200
9. Duke University, Durham, N. C	109	96	205
10. Georgia School of Technology, Atlanta, Ga	138	167	305
11. Harvard University, Cambridge, Mass	105	110	215
12. Holy Cross, The College of the, Worcester, Mass	104	118	222
13. Idaho, University of, Moscow, Idaho	91	17	108
14. Illinois Institute of Technology, Chicago, Ill	108	19	127
15. Illinois, University of, Urbana, Ill	100	57	157
16. Iowa State College, Ames, Iowa	112	81	193
17. Kansas, The University of, Lawrence, Kans	104	63	167
18. Louisville, University of, Louisville, Ky	88	16	104
19. Marquette University, Milwaukee, Wis	110	26	136
20. Miami University, Oxford, Ohio	97	65	162
21. Michigan, University of, Ann Arbor, Mich	131	86	217
22. Minnesota, University of, Minneapolis, Minn	123	86	209
23. Mississippi, University of, University, Miss	78	58	136
24. Missouri, University of, Columbia, Mo	88	56	144
25. Nebraska, The University of, Lincoln, Nebr	90	38	128
26. New Mexico, The University of, Albuquerque, N. Mex	104	56	160
27. North Carolina, The University of, Chapel Hill, N. C	114	124	238
28. Northwestern University, Evanston, Ill	140	58	198
29. Notre Dame University, Notre Dame, Ind	122	86	208
30. The Ohio State University, Columbus, Ohio	127	76	203
31. Oklahoma, The University of, Norman, Okla	119	98	217
32. Oregon State College, Corvallis, Oreg	84	35	119
33. The Pennsylvania State College, State College, Pa	94	65	159
34. Pennsylvania, University of, Philadelphia, Pa	99	98	197
35. Princeton University, Princeton, N. J	128	110	238
36. Purdue University, West Lafayette, Ind	138	149	287
37. Rensselaer Polytechnic Institute, Troy, N. Y	117	104	221
38. The Rice Institute, Houston, Tex	84	70	154
39. Rochester, University of, Rochester, N. Y	101	36	137
40. South Carolina, University of, Columbia, S. C	92	38	130
41. Southern California, The University of, Los Angeles, Calif	88	73	161
42. Stanford University, Stanford University, Calif	115	38	153
43. Texas, The University of, Austin, Tex	97	103	200
44. Tufts College, Medford, Mass	100	69	169
45. Tulane University of Louisiana, New Orleans, La	96	73	169
46. Utah, University of, Salt Lake City, Utah	78	35	113
47. Vanderbilt University, Nashville, Tenn	113	60	173
48. Villanova College, Villanova, Pa	93	79	172
49. Virginia, University of, Charlottesville, Va	94	98	192
50. Washington, University of Seattle, Wash	125	97	222
51. Wisconsin, The University of, Madison, Wis	110	80	190
52. Yale University, New Haven, Conn	156	151	307
	5,562	4,074	9,636

NOTE 1.—2,622 of the total number of contract students reported are in the process of being enrolled.

NOTE 2.—Regular students are those trained under the provisions of Public Law 729 (Holloway bill). Contract students are those trained under the provisions of the act of Mar. 4, 1925 (establishing the NROTC, on the same basis as the ROTC).

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12. *Give the authorized strengths of the Naval Academy, its actual midshipmen strength as of December 1, 1948, and the estimated strength of the 1949 graduating class.*

(*a*)	Authorized strength	[1] 4,402
(*b*)	Actual strength, Nov. 30, 1948	3,307
(*c*)	Estimated strength 1949 graduating class	786
	Estimated number to be commissioned	770

[1] Includes 20 from other American Republics as designated by the President.

SHIPS

Nomenclature Naval Vessels

MAJOR COMBATANT

Battleship	BB
Heavy cruiser	CA
Large cruiser	CB
Light cruiser	CL
Light cruiser (antiaircraft)	CLAA
Aircraft carrier	CV
Large carrier	CVB
Small carrier	CVL
Escort carrier	CVE
Destroyers	DD
Escort vessels	DE
Submarines	SS

AMPHIBIOUS VESSELS

Amphibious force flagship	AGC
Cargo, attack	AKA
Transports, attack	APA
High-speed transport	APD
Flotilla flagship	LCFF
Landing craft tank	LCT
Infantry (gunboat)	LCIG
Infantry (large)	LCIL
Infantry (mortar)	LCIM
Support (large) (MK, III)	LCSL
Dock	LSD
Medium	LSM
Medium (rocket)	LSMR
Tank	LST
Vehicle	LSV

MINE VESSELS

Mine layer	CM
Mine sweeper	AM
Mine sweeper, coastal	AMC
Mine sweeper, coastal (underwater locator)	AMCU
Auxiliary motor minesweeper	AMS
Light mine layers	DM
Mine sweepers, high speed	DMS

PATROL VESSELS

Submarine chasers	PCS
Submarine chasers	PC
Escort	PCE
Escort (rescue)	PCER
Motor torpedo boats	PT

AUXILIARIES

Destroyer tenders	AD
Ammunition ships	AE
Store ships	AF
Miscellaneous	AG
Surveying ships	AGS
Surveying ships (coastal)	AGSC
Hospital ships	AH
Cargo ships	AK
Net cargo ships	AKN
General stores-issue ships	AKS
Net laying ships	AN
Oilers	AO
Gasoline tankers	AOG
Transports	AP
Coastal transports, small	APC
Barrack ships (self-propelled)	APB
Barrack ships (non-self-propelled)	APL
Repair ships	AR
Repair ships:	
Battle damage	ARB
Internal combustion engine	ARG
Heavy-hull repair ships	ARH
Repair ships, landing craft	ARL
Salvage vessels	ARS
Salvage lifting vessels	ARSD
Salvage craft tenders	ARST
Aircraft repair ships	ARV
Aircraft repair ships (aircraft)	ARVA
Aircraft repair ships (engine)	ARVE
Submarine tenders	AS
Submarine rescue vessels	ASR
Ocean tug, auxiliary	ATA
Ocean tug, fleet	ATF
Ocean tug, old	ATO
Ocean tug, rescue	ATR
Seaplane tenders	AV
Seaplane tenders (small)	AVP
Aviation supply ships	AVS
Distilling ships	AW
Miscellaneous unclassified	IX

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1. *Give the number of ships in commission by type or class (exclusive of auxiliaries).*

Vessels in commission, by types (exclusive of auxiliaries)

Combatant type:	
CVB	3
CV	8
CVL	3
CVE	7
BB	1
CA	8
CL	13
CLAA	5
DD	134
DE	12
SS	79
Total	273
Mine type:	
DM	4
DMS	16
AM	11
AMc	1
AMC(U)	1
AMS	21
Total	54
Patrol type:	
PCE	12
PCER	5
PC	16
PCS	13
PT	4
Total	50
Amphibious type:	
AGC	7
AKA	8
APA	16
APD	12
LCIL	11
LSD	6
LST	36
LSM	18
LCFF	4
LSMR	8
LCT	28
Total	149

2. *Give the number of ships in mothballs by type or class.*

Number of vessels in Reserve Fleets by type

Combatant type:	
CV	16
CVL	6
CVE	59
CB	2
BB	14
CA	15
CL	21
CLAA	4
DD	207
DE	215
SS	92
Total	651
Auxiliary type:	
AD	8
AE	13
AG	6
AH	4
AK	1
AKN	1
AKA	3
AKS	1
AN	34
AO	2
AOG	6
AP	2
APA	1
APB	16
APL	38
AR	5
Auxiliary type—Continued	
ARB	11
ARG	12
ARL	29
ARS	12
ARSD	2
ARST	2
ARV	2
ARV (A)	2
ARV (E)	2
AS	10
ASR	3
ATA	19
ATF	30
AV	8
AVP	[1] 6
AVS	1
AW	2
Total	294
Mine type:	
CM	1
DM	6
DMS	4
AM	112
AMS	13
Total	136
Patrol type: PC	72

[1] 15 additional on loan to Coast Guard.

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Number of vessels in Reserve Fleets by type—Continued

Amphibious type:		Amphibious type—Continued	
AGC	8	LCIL	52
APA	53	LCFF	21
APD	80	LCSL	97
LSD	15	LSMR	40
LST	91	LCT	86
LSM	145		
LSV	5	Total	693

3. *Ships, the building of which has been suspended, and percentage of completion of ships:*

		Percent of completion
BB66	*Kentucky*	73
CB3	*Hawaii*	84
DD791	*Seaman*	79
DD720	*Castle*	60.3
DD721	*W. R. Thompson*	53.3
DD766	*Lansdale*	62.5
DD767	*S. D. Owens*	58.3
DD768	*Hoel*	50.7
DD769	*Abner Read*	47.5
SS436	*Unicorn*	46
SS437	*Walrus*	36.5
DE539		61
DE540		74

4. *Ships in the building program and degree of completion:*

Type	Ship	Completion date
CV34	*Oriskany*	Complete, Dec. 17, 1949.
1 CVA	CVA58 (flush deck carrier)	Contract plans in progress. Complete May 1, 1952.
1 CL	CL145. *Roanoke* (14,700 tons)	Complete, Mar. 31, 1949.
1 CLC, completion of CA125 hull.	CLC-1. *Northampton*	No date set.
1 CLK	CLK-1. *Norfolk*	Working plans under development. Authorized 1948 program.
1 CLK	CLK-2. Unnamed	Working plans under development. Authorized 1949 program.
2 CA (17,000 tons)	CA 139. *Salem*	Complete, May 15, 1949.
	CA 148. *Newport News*	Complete, Feb. 1, 1949.
4 DD (3,650 tons)	DD 927 DD 928 DD 929 DD 930	Authorized 1948 program. Working plans under development. No date set.
1 DD (experimental engine)	DD 828. *Timmerman*	Complete, Aug. 1, 1950.
2 DDE	DDE 719. *Epperson*	Complete, Mar. 15, 1949.
	DDE 824. *Basilone*	Complete, Apr. 1, 1949.
2 DDK	DDK 825. *Carpenter*	Complete, Aug. 1, 1949.
	DDK 827. *Robert A. Owens*	Complete, June 30, 1949.
2 SS	SS 565. *Wahoo*	Complete, July 1, 1951.
	SS 566. *Trout*	Complete, Apr. 1, 1951.
2 SS	SS 567 SS 568	Authorized by 1949 program, no date set.
2 SS	SS 563. *Tang*	Complete, Jan. 15, 1951.
	SS 564. *Trigger*	Complete, Aug. 31, 1950.
5 SS	SS 416. *Tiru*	Complete, Jan. 15, 1949.
	SS 490. *Volador*	Complete, Jan. 19, 1949.
	SS 523. *Grampus*	Complete, Sept. 15, 1949.
	SS 524. *Pickerel*	Complete, July 11, 1949.
	SS 525. *Grenadier*	Complete, Nov. 30, 1949.
3 SSK	USSK-1	Authorized 1948 program, no date set.
	USSK-2	Authorized 1949 program, no date set.
	USSK-3	Do.
4 PT	PT 809	Complete, Oct. 30, 1949.
	PT 810	Complete, Aug. 15, 1949.
	PT 811	Complete, Nov. 15, 1949.
	PT 812	Complete, June 15, 1950.
1 LST (2,264 tons)	LST 1154	Complete, May 1, 1949.
1 AD (7,968 tons)	AD 36. *Bryce Canyon*	Complete, Dec. 30, 1949.

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Additional item: Ships being or to be converted under authorized conversion program, with estimated completion dates:

Type	Ship	Completion date
1 AKA to AK (Arctic)	AKA56. *Arneb*	Complete Mar. 15, 1949.
2 CV (Essex class) to carry heavy planes.	CV9. *Essex*	In 1949 program. Contract plans being prepared.
	CV18. *Wasp*	
9 DD (2,100 tons) to DDE	DDE507. *Conway*	Contract plans completed. Working plans under preparation.
	DDE508. *Cony*	
	DDE465. *Saufley*	
	DDE445. *Fletcher*	
	DDE446. *Radford*	
	DDE449. *Nicholas*	
	DDE450. *O'Bannon*	
	DDE517. *Walker*	Conversion started Sept. 4, 1948.
	DDE577. *Sproston*	
3 DD (2,100 tons) to DDE	DDE466. *Waller*	Contract plans completed.
	DDE498. *Philip*	Conversion started Sept. 4, 1948.
	DDE499. *Renshaw*	
2 DE to DER		Authorized in 1949 conversion program. Design study awaiting evaluation.
6 DD (2,200 ton) to ASW	DD764. *Lloyd Thomas*	Authorized in 1949 program. Characteristics approved. No date set.
	DD765. *Keppler*	
	DD858. *F. T. Berry*	
	DD859. *Norris*	
	DD860. *McCaffery*	
	DD861. *Harwood*	
2 LSD to LSD (Arctic)	LSD 5. *Gunston Hall*	Complete Mar. 15, 1949.
	LSD 6. *Lindenwald*	Complete Mar. 1, 1949.
6 LCT(6) to LCT(6) Arctic	LCT(6) 1273	Complete Mar. 15, 1949.
	1330	Complete Mar. 1, 1949.
	1363	Complete Mar. 15, 1949.
	1462	Complete Mar. 1, 1949.
	1463	Do.
	1374	Complete Mar. 15, 1949.
1 SS to SSR (Arctic)	SSR419. *Tigrone*	Complete Feb. 21, 1949.
Do		Authorized in 1949 program, no date set.
1 SS to SSP (transport)	SS315 *Sealion*	Complete Dec. 15, 1948.
1 SS to SSO (oiler)	SSO362 *Guavina*	Complete Nov. 10, 1949.
6 SS to guppy-snorkel	SS339 *Catfish*	Complete May 1, 1949.
	SS344 *Cobbler*	Complete May 6, 1949.
	SS345 *Cochino*	Complete Jan. 14, 1949.
	SS478 *Cutlass*	Complete Nov. 30, 1948.
	SS483 *Sea Leopard*	Complete May 1, 1949.
	SS485 *Sibago*	Complete June 3, 1949.
2 CVL to ASW	CVL28 *Cabot*	Authorized in 1949 program, completion date not set.
	CVL29 *Bataan*	

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5. *Give the assignment of vessels to each fleet (by type or class).*

Assignment of commissioned vessels by fleet

Atlantic Fleet:	
CVB	3
CV	3
CVL	3
CVE	4
BB	1
CA	4
CL	7
CLAA	3
DD	70
DE	7
DM	4
DMS	8
SS	45
LCFF	2
LCIL	5
LCT	12
LSD	3
LSM	5
LSMR	4
LST	18
PC	9
PCE	2
PCER	3
PCS	9
PT	4
AMS	11
AD	5
AE	1
AF	6
AG	4
AGC	4
AGS	2
AGSC	6
AH	1
AK	2
AKA	6
AKS	1
AM	7
AMc	1
AMC (U)	1
AN	2
AO	8
AOG	5
APA	8
APC	5
APD	6
AR	3
ARL	2
ARS	3
ARSD	2
AS	2
ASR	4
ATF	12
AV	1
AVP	6
IX	1
Total	366

Pacific Fleet:	
CV	5
CVE	3
CA	4
CL	6
CLAA	2
DD	64
DE	5
DMS	8
SS	34
LCFF	2
LCIL	6
LCT	16
LSD	3
LSM	8
LSMR	4
LST	18
PC	7
PCE	10
PCER	2
PCS	4
AMS	10
AD	4
AE	1
AF	8
AG	16
AGC	3
AH	1
AK	4
AKA	9
AKS	1
AM	4
AN	3
AO	12
AOG	9
APA	8
APD	6
AR	2
ARG	1
ARH	1
ARL	2
ARS	3
AS	2
ASR	4
ATA	2
ATF	18
AV	4
AVP	3
Total	352

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In addition to the above the following vessels are assigned to naval transportation service and therefore not shown under the separate fleets due to their operations on a world-wide basis.

AKA	12
AO	16
AP	6
APA	4
Total	38

NAVAL AVIATION

1. *Give the number of aircraft now available to the Navy.*

Answer: For reasons of security this data cannot be printed in this report. However, this information is available to committee members upon request of the Chief Clerk and presents the first-line aircraft, reserve aircraft, and the number of groups and squadrons in the Navy.

2. *Give the number of officers (by grade) and enlisted personnel assigned to naval aviation.*

Answer: The figures below include all aviators, general service officers, doctors, dentists, supply officers, chaplains, and others assigned to aviation activities, including groups and squadrons, aviation ships, Bureau of Aeronautics, Deputy Chief of Naval Operations for Air, air stations, weather centrals and all aviation training activities. Not included are naval aviators assigned to educational schools, major other-than-air fleet commands and major staffs, such as CNO, Bureau of Naval Personnel, and the Joint Chiefs of Staff organization:

Flag	37
Captains	290
Commanders	845
Lieutenant Commanders	1,717
Lieutenants	3,517
Lieutenants (junior grade)	3,801
Ensigns	2,320
Total officers	12,527
Warrant officers	1,006
Enlisted	113,234

3. *Give the number of aircraft (by type) under contract by the Navy for delivery in 1949, 1950, and 1951.*

Answer: For reasons of security these data cannot be printed in this report. However, it is available to committee members upon request of the Chief Clerk.

4. *Give the number of Navy pilots as of December 1, 1948 (by grade).*

Answer: There are 11,621 pilots in the Navy. For reasons of security the grade distribution of Navy pilots cannot be printed in this report. However, this information is available to committee members upon request of the Chief Clerk.

EQUIPMENT AND MATÉRIEL

1. *Advise as to the adequacy of reserves of equipment and strategic matériel, indicating whether the supply of such stock is adequate to support 3 months, 6 months, 9 months of warfare without replenishment.*

Answer: For reasons of security these data cannot be printed in this report. However, it is available to committee members upon request of the Chief Clerk.

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PART IV

DEPARTMENT OF THE AIR FORCE

STATIONS AND FACILITIES
PERSONNEL
AIRCRAFT
EQUIPMENT AND MATÉRIEL

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PART IV.—DEPARTMENT OF THE AIR FORCE

STATIONS AND FACILITIES

1. *Submit by State and by location in each State all property owned by or under the jurisdiction of the Air Force. Identify the use to which each such piece of property is being put.*

Answer: This information is so voluminous that it is considered inadvisable to include it in this summarized report. However, the information is available to committee members upon request of the Chief Clerk.

2. *List the Air Force installations beyond the continental limits, the mission of each, and the strength of their complements.*

Answer: For reasons of security the list of these installations and the other data requested cannot be printed in this report. However, the information is available to committee members upon request of the Chief Clerk.

PERSONNEL

1. *Give the present authorized and actual strength (as of December 1, 1948) of officers and enlisted personnel in the Air Force.*

Estimated command strength compared with authorized strength (as of Dec. 1, 1948)

	Authorized strength	Estimated actual strength
Officers	56,000	52,500
Enlisted	360,000	356,800
Total	416,000	409,300

NOTE.—"Command strength" includes all military personnel under the jurisdiction of the U. S. Air Force, irrespective of the basic departmental status of the individual. Includes personnel of the Department of the Army when assigned for duty with the Air Force, but does not include approximately 4,500 Air Force personnel under the command jurisdiction of the U. S. Army. "Authorized strength" is a distribution of the President's ceiling requirement for Dec. 31, 1948, as amended by the Secretary of Defense. The ceiling figure is exclusive of 1-year trainees.

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2. *Give the number of officers in each grade (permanent and temporary).*

Regular USAF commissioned officers by permanent grade and grade in which serving compared with total departmental officer strength by grade in which serving (as of Oct. 31, 1948)

	U. S. Air Force (Regular)		Air Force departmental strength—Grade in which serving [1]
	Permanent grade	Grade in which serving [1]	
Generals		4	4
Lieutenant generals		12	12
Major generals	39	78	78
Brigadier generals	56	99	102
Total general officers	95	193	196
Colonels	574	1,431	1,548
Lieutenant colonels	1,402	2,538	3,252
Majors	3,177	3,905	6,577
Captains	4,973	5,209	14,267
First lieutenants	6,977	4,233	19,672
Second lieutenants	640	329	2,437
Total	17,838	17,838	47,949

NOTE.—"Departmental strength" includes all military personnel who have the basic departmental status of the Department of the Air Force, whether or not such personnel have been placed on duty with another department. Includes Air Force personnel on duty with the Department of the Army.

U. S. Air Force commissioned officer command strength by grade in which serving [1]

Generals	186
Colonels	1,556
Lieutenant colonels	3,380
Majors	6,948
Captains	15,572
First lieutenants	20,814
Second lieutenants	2,495
Total	50,951

[1] "Grade in which serving" denotes temporary grade, except in instances where officers are currently serving in their permanent grade.

3. *Give the number of officers and enlisted personnel serving overseas (by geographical area).*

Answer: For reasons of security, this information cannot be printed in this report. However, it may be obtained by committee members upon request of the Chief Clerk.

4. *Give the number of officers (by grade) and enlisted personnel serving in the Department of the Air Force, Washington, D. C., as of December 1, 1948.*

Officers (by grade) and enlisted personnel on duty with headquarters, U. S. Air Force, in Washington, D. C. (as of Oct. 31, 1948)

Officers:	
Generals	63
Colonels	274
Lieutenant colonels	445
Majors	534
Captains	412
First lieutenants	24
Second lieutenants	-----
Total commissioned officers	1,752
Warrant officers	18
Total officers	1,770
Enlisted personnel	467
Total military personnel	2,237

NOTE.—Data as of Dec. 1, 1948, not available.

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5. *Give the number of civilian employees in the Department of the Air Force, Washington, D. C.*

Answer: As of October 31, 1948, there were 2,702 civilian employees on duty with headquarters, United States Air Force, in Washington, D. C., and there were 4,657 civilians on duty in Washington, D. C., metropolitan district.

6. *Give the number of civilian employees of the Air Force in the continental United States (other than in Washington, D. C.).*

Answer: As of October 31, 1948, there were 125,659 civilian employees on duty in continental United States (other than those on duty in headquarters, United States Air Force, Washington, D. C.), and there were 123,704 Air Force civilian employees in continental United States (other than those on duty in Washington, D. C., metropolitan district).

7. *Give the number of civilian employees of the Air Force outside the United States.*

Answer: As of October 31, 1948, there were 27,391 [1] civilian employees of the Air Force outside continental United States.

8. *Give the strength of the Air Reserve and the Air National Guard, indicating how many are being actively trained.*

Air Reserve and Air National Guard strength indicating the status of training

PART I. AIR RESERVE

	Air Reserve strength as of Sept. 30, 1948	Number who have received training during September 1948 [1]	
		Active duty [2]	Inactive duty [3]
Officers	232,903	1,204	29,571
Enlisted	187,316	583	8,389
Total	420,219	1,787	37,960

PART II. AIR NATIONAL GUARD

	Air National Guard strength as of Oct. 31, 1948	Number in training [4]
Officers	4,874	4,874
Enlisted	26,095	26,095
Total	30,969	30,969

[1] No data are available on the actual number of air reservists who are actually receiving training at any specified time; data are maintained on the number of persons on whom training has been accomplished. All reservists having assignments to T/O&E units (43,320) are subject to continuous inactive duty within the limitations imposed by availability of appropriations.

[2] Active duty training includes individual or unit training accomplished by U. S. Air Force Reserve personnel who are called to active duty for any of the following purposes:

1. Annual training periods of 15 days.
2. Attendance at courses of instruction at service schools.
3. Duty as instructor at Air ROTC summer camps for periods not to exceed 90 days.
4. Attendance at command post exercises for periods not to exceed 4 days.
5. Annual training periods, not to exceed 21 days, with Air National Guard units undergoing field maneuvers.

[3] Inactive duty training includes:

1. Individual or unit training accomplished by USAF Reserve personnel voluntarily and without specific orders which place such personnel on active-duty status.
2. Duly authorized and scheduled period of instruction or other appropriate duty for pay purposes of at least 2 hours' duration conducted by a USAFR T/O&E unit.

[4] All men assigned to the Air National Guard are subject to continuous training.

[1] Paid from appropriated funds.

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9. *Give the number of persons receiving ROTC training as of December 1, 1948.*

Answer: As of December 1, 1948, there were 40,685 Air Force ROTC students.

NOTE.—Above data are based on fall semester class inventories as of October 31, 1948. In view of the fact that little change could occur, the above data are submitted as estimates for December 1, 1948.

10. *List the institutions where Air Force ROTC training is being conducted and the number assigned to each institution.*

Distribution of Air Force ROTC trainees, by institution where training is being conducted, as of Dec. 1, 1948

University of Akron	272	Montana State University	273
Arizona State College	262	University of Minnesota	370
University of Arizona	537	University of Missouri	830
Alabama Polytechnic Institute	468	University of Mississippi	208
University of Alabama	715	Mississippi State College	451
University of Arkansas	397	New Hampshire University	359
Ball State	174	New York University	400
Boston University	324	University of Nevada	250
Bradley University	177	University of Nebraska	476
Baylor University	147	North Dakota Agricultural	303
Butler	107	University of North Dakota	254
University of Cincinnati	393	Notre Dame University	232
Colgate University	158	North Carolina State College	415
University of Connecticut	383	University of North Carolina	216
Cornell University	448	New Mexico College of Agriculture and Mechanic Arts	218
Coe College	166	Ohio University	553
Colorado State	563	Ohio State University	1,054
Citadel	267	Oregon State Agricultural College	559
Clemson	375	University of Oregon	516
Duquesne University	344	University of Oklahoma	722
University of Denver	150	Oklahoma Agricultural and Mechanical College	661
East Carolina Teachers	79	University of Pennsylvania	208
Fordham University	395	Pennsylvania State College	326
Fresno State College	85	University of Pittsburgh	333
University of Florida	663	Purdue University	665
Georgetown University	203	Rutgers University	510
Gettysburg College	123	San Jose State College	212
Georgia Tech	281	Stanford University	180
University of Georgia	255	University of Southern California	108
Harvard University	152	University of St. Louis	628
Howard University	328	South Dakota State	294
University of Idaho	277	St. Thomas College	583
University of Iowa	645	Southern Methodist University	214
University of Illinois	567	South Western Louisiana Institute	227
Iowa State	689	Syracuse University	196
University of Indiana	1,004	Texas, Agricultural and Mechanical College of	1,128
Johns Hopkins University	157	Texas School of Technology	300
University of Kentucky	721	University of Texas	314
Kansas State	494	University of Tennessee	144
University of Kansas	268	Trinity College	104
Lehigh University	377	Tulane University	202
Loyola University	275	Tuskegee Institute	274
Louisiana State University	624	University of California at Los Angeles	467
University of Maryland	890	University of Utah	269
University of Miami	213	Utah State Agricultural College	626
University of Massachusetts	283	Virginia Military Institute	235
Massachusetts Institute of Technology	445		
University of Michigan	224		
Michigan College of Mining and Technology	202		
Michigan State College	712		
Montana State College	305		

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Distribution of Air Force ROTC trainees, by institution where training is being conducted, as of Dec. 1, 1948—Continued

Virginia Polytechnic Institute	344	University of Wichita	192
University of Washington	618	Williams College	164
Washburn Municipal University	92	University of Wisconsin	398
State College of Washington	551	Wisconsin State Teachers College	122
Wayne University	204	University of Wyoming	279
West Virginia University	496	Yale University	244
West Kentucky State Teachers College	151		

11. *Give the number of Military Academy and Naval Academy graduates received this year by the Air Force and the number expected to be received from the next graduating class.*

Military and Naval Academy graduates received by the Air Force in 1948 and number expected to be received from next graduating classes

From Military Academy	111
From Naval Academy	0
Expected from Military Academy	230
Expected from Naval Academy	55

12. *Give the number of pilots of the Air Force (by grade).*

Rated pilots in departmental strength by grade, by department of assignment (as of Aug. 31, 1948)

Grade	Assigned to Army	Assigned to Air Force	Total pilots
General	16	166	182
Colonel	74	1,083	1,157
Lieutenant colonel	61	1,633	1,694
Major	79	2,825	2,904
Captain	141	7,203	7,344
First lieutenant	177	11,280	11,457
Second lieutenant		726	726
Total officers	548	24,916	25,464
Warrant officer, chief		2	2
Warrant officer (junior grade)			
Total officers and warrant officers	548	24,918	25,466

AIRCRAFT

1. *Give the number of first-line combat aircraft and reserve aircraft available to the Air Force (by type), and furnish also what this figure represents in terms of groups.*

Answer: For reasons of security this information cannot be printed in this report. However, it may be obtained by committee members upon request of the Chief Clerk. It may be stated that there is a total of 23,000 active and reserve aircraft under control of the Air Force as of December 16, 1948.

2. *Give the number of aircraft (by type) under contract by the Air Force for delivery in 1949, 1950, and 1951.*

Answer: For reasons of security this information cannot be printed in this report. However, it may be obtained by committee members upon request of the Chief Clerk.

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3. *Furnish a definition as to what is meant by "the 70-group program," together with information as to how far along the program is as of December 1, 1948.*

Answer: For reasons of security this information cannot be printed in this report. However, it may be obtained by committee members upon request of the Chief Clerk.

EQUIPMENT AND MATÉRIEL

1. *Advise as to the adequacy of reserves of equipment and strategic matériel, indicating whether the supply of such stocks is adequate to support 3 months, 6 months, 9 months, or 12 months of warfare without replenishment.*

Answer: For reasons of security this information cannot be printed in this report. However, it may be obtained by committee members upon request of the Chief Clerk.

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PART V

MARINE CORPS

STATIONS AND FACILITIES
PERSONNEL
AVIATION
EQUIPMENT AND MATÉRIEL

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Part V. Marine Corps

STATIONS AND FACILITIES

1. *Submit by State and by location in each State all property owned by or under the jurisdiction of the Marine Corps. Identify the use to which each such piece of property is being put.*

Answer: This information is so voluminous that it is considered inadvisable to include it in this summarized report. However, the information is on file with the Chief Clerk and may be obtained from him by members of the committee.

2. *List Marine Corps installations beyond the continental limits, the mission of each, and the strength of their complements.*

Answer: For reasons of military security, data on the mission and strength of the complements of these extracontinental installations cannot be printed in this report for public distribution. However, the information is on file with the Chief Clerk and may be obtained from him by committee members upon request. The location of these installations is as follows:

PACIFIC AREA

Ground:
- Oahu
- Guam
- Tsingtao

China area: Tsingtao

Air:
- Hawaiian area:
  - Ewa
  - Midway
- Marianas area: Guam

ATLANTIC AREA

Ground: Mediterranean

SECURITY FORCES, PACIFIC AREA

Adak, Alaska
Barbers Point, T. H.
Guam, Marianas Islands
Kaneohe Bay, T. H.
Kodiak, Alaska
Kwajalein, Marianas Islands
Midway
Oahu, T. H.
Pearl Harbor, T. H.
Sangley Point, Luzon, Republic of the Philippines
Saipan, Marianas Islands
Subic Bay, Republic of the Philippines
Yokosuka, Japan

SECURITY FORCES, ATLANTIC AREA

Argentia, Newfoundland
Bermuda
Balboa, C. Z.
Guantanamo Bay, Cuba
Eastern Atlantic and Mediterranean
Port Lyautey, French Morocco
Roosevelt Roads, P. R.
San Juan, P. R.
Trinidad, British West Indies

SUPPORTING ESTABLISHMENTS, PACIFIC AREA

Ground:
- Guam, Marianas Islands
- Oahu, T. H.

Air: Ewa, Oahu, T. H.

SUPPORTING ESTABLISHMENTS, ATLANTIC AREA

None

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PERSONNEL

1. *Give the present authorized and actual strength (as of December 1, 1948) of officers and enlisted personnel in the Marine Corps.*

	Authorized by law	Appropriated man-year average	Estimated Dec. 1, 1948
Officers	8,200	7,388	7,153
Enlisted	100,000	84,312	76,197
1-year enlistees	6,000		2,211

2. *Give the number of officers in each grade (permanent and temporary).*

Active strength of commissioned, warrant, and commissioned warrant officers of the Regular Marine Corps and Marine Corps Reserve as of Dec. 1, 1948

Temporary rank	USMC permanent		Enlisted U. S. Marine Corps temporary	Reserves		Total
	Commissioned officer	Chief warrant officer and warrant officer		Male	Female	
General	2					2
Lieutenant general	2					2
Major general	14					14
Brigadier general	26					26
Colonel	[1] 268					268
Lieutenant colonel	663	10		4		677
Major	[2] 867	60	1	9	1	938
Captain	[3] 1,135	244	60	11	3	1,453
First lieutenant	[4] 1,650	215	86	34		1,985
Second lieutenant	621	36	234	3		894
Commissioned warrant		227	166			393
Warrant		157	372			529
Total	5,248	949	919	61	4	7,181

[1] Includes 1 U. S. Marine Corps woman.
[2] Includes 2 U. S. Marine Corps women.
[3] Includes 3 U. S. Marine Corps women.
[4] Includes 11 U. S. Marine Corps women.

3. *Give the number of officers and enlisted personnel serving outside the continental limits.*

Estimated Dec. 1, 1948

Officers	1,427
Enlisted	16,972
Total	18,399

4. *Give number of officers and enlisted personnel serving with the Navy afloat.*

Estimated Dec. 1, 1948

	Officer	Enlisted	Total
Ships' detachments and flag allowances	179	1,989	2,168

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5. *Give the number of officers and enlisted personnel assigned to shore duty in the continental United States (other than in the Navy Department, Washington, D. C.).*

Estimated Dec. 1, 1948

Officers	4,784
Enlisted	57,512
Total	62,296

6. *Give the number of officers (by grade) and enlisted personnel assigned to the Navy Department, Washington, D. C.*

Estimated Dec. 1, 1948

	Officer	Enlisted	Total
Headquarters Marine Corps	376	1,029	1,405
Navy Department	116	41	157
Total	492	1,070	1,562

Officers (by grade)

Generals	[1] 16
Colonels	48
Lieutenant colonels	108
Majors	115
Captains	94
First lieutenants	55
Second lieutenants	10
Commissioned warrant officers	17
Warrant officers	29
Total	492

[1] Includes Gen. A. A. Vandegrift, U. S. Marine Corps, at Lynchburg, Va., carried on the rolls of headquarters, Marine Corps.

7. *Give number of civilian employees of the Marine Corps in the Navy Department, Washington, D. C. (December 1, 1948).*

IV–b	799
Other	---
Total	799

8. *Give number of civilian employees of Marine Corps in the continental United States (other than in Navy Department, Washington, D. C.) as of December 1, 1948.*

	IV-b	Other	Total
Depot of Supplies, Philadelphia, Pa	718	2,475	3,193
Depot of Supplies, San Francisco, Calif	362	835	1,197
Depot of Supplies, Norfolk, Va	30	96	126
Depot of Supplies, Barstow, Calif	233	994	1,227
Marine Corps Recruit Depot, Parris Island, S. C	169	677	846
Marine Corps Schools, Quantico, Va	232	671	903
Marine Barracks, Washington, D. C	17	9	26
Marine Barracks, Naval Shipyard, Marine Island, Calif	0	9	9
Henderson Hall, Arlington, Va	1	32	33
Quartermaster Detachment, Washington, D. C	0	3	3
Marine Barracks, Camp Lejeune, N. C	378	1,766	2,144
Marine Corps Recruit Depot, San Diego, Calif	45	123	168
Marine Barracks, Camp Pendleton, Oceanside, Calif	256	714	970
Department of Pacific, San Francisco, Calif	10	0	10
Public Information Office, New York, N. Y	2	0	2
Total field, continental United States	2,453	8,404	10,857

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9. *Give strength of the Marine Corps Reserve, indicating the total number that is being actively trained.*

Estimated strength Dec. 1, 1948

	Ground		Aviation		Total
	Officers	Enlisted	Officers	Enlisted	
Organized	1,336	29,739	1,454	5,167	37,696
Volunteer [1]	15,805	48,677	8,953	6,678	80,113
Fleet Marine Corps Reserve		1,088		49	1,137
Total	17,141	79,504	10,407	11,894	118,946

[1] Includes cadets.

Marine Corps Reserve active training.—All of the Organized Reserve is being actively trained. The percentage of attendance at drills and annual summer training for fiscal year 1949 to December 1, 1948 is as follows:

	Ground		Aviation	
	Officers	Enlisted	Officers	Enlisted
	Percent	*Percent*	*Percent*	*Percent*
Drill attendance	85	62	80	60
Summer training	55	55	65	55

The following active duty training for the Volunteer Reserve has been accomplished in fiscal year 1949, up to December 1, 1948:

	Ground	Aviation
Officers	705	540
Enlisted	968	66

AVIATION

1. *Give the number of first-line combat aircraft and reserve aircraft now available in the Marine Corps (by type) and what this number represents in terms of squadrons or groups.*

Marine Corps aviation has—

First-line combat aircraft, fighter type 577

Serving with 6 Marine aircraft groups 482

which include—

16 Marine fighter squadrons.

5 Marine all-weather fighter squadrons.

2 Marine photographic squadrons.

Used in training but could be immediately diverted to combat support in case of emergency 95

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2. *Give number of pilots in Marine Corps (by grade).*

Rank	NA	NA (permanent Chief Warrant officers and Warrant officers)	Total
Major general	3		3
Brigadier general	7		7
Colonel	59		59
Lieutenant colonel	192	2	194
Major	305	4	309
Captain	487	19	506
First lieutenant	852	8	860
Second lieutenant	50	1	51
Warrant officer		1	1
Master sergeant	124		124
Technical sergeant	151		151
Total	2,230	35	2,265

EQUIPMENT AND MATÉRIEL

1. *Advise as to the adequacy of reserves of equipment and strategic matériel, indicating whether the supply of such stocks is adequate to support 3 months, 6 months, 9 months, or 12 months of warfare without replenishment.*

Answer: For reasons of security this information cannot be printed in this report. However, it may be obtained by committee members upon request of the Chief Clerk.

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[No. 3]

REPORT OF INVESTIGATION INTO THE OPERATION OF NAVY SHIPS' SERVICE STORES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington 25, D. C., January 10, 1949.

Hon. CARL VINSON,
House of Representatives.

DEAR CARL: During the second session of the Eightieth Congress, Subcommittee No. 6 on Procurement and Supply, of which I was then chairman, authorized me and Mr. Brown of the professional staff to conduct an investigation into the operation of Navy ships' service stores. The committee's action was prompted by the receipt of numerous complaints to the effect that the Navy Ships' Store Office in New York was exercising improper control over the procurement of merchandise locally by individual ships' service stores.

The investigation in question was conducted by Mr. Brown at my direction during the recess period and I am enclosing herewith a copy of the report which he has prepared.

Due to the fact that there was no opportunity to hold any committee meetings immediately prior to the expiration of the Eightieth Congress, no formal action was taken by my subcommittee or by the full committee upon this report. However, I would like at this time to record my personal approval of the report and to recommend for your consideration the conclusions and recommendations set forth therein.

While I am fully in accord with the first recommendation—namely, that no changes in the Navy store system be made at this time—I think you will agree that the detailed findings in the report tend to support the second recommendation, namely, that the committee continue a close surveillance of the operations of the Navy Ships' Store Office. I believe these findings clearly demonstrate that the efforts of our committee have been responsible to a considerable extent for the progress which has been made to date; and, by the same token, it seems to me that they suggest the advisability of continued vigilance on the part of the committee to insure against any possible return in the future to some of the undesirable conditions which existed a year or two ago.

During the hearings held in March 1947 by Subcommittee No. 6, relative to this problem, you asked Mr. Kenney and Mr. Royall to conduct a joint study as to the possibility of adopting a uniform procedure for the purchase of merchandise for resale by Army post exchanges and Navy ships' service stores. Following your suggestion, the subcommittee formally requested that such a study be made and that a report of this study be submitted to the committee not later than June 1, 1947.

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Such a report was made some months later and is included in the printed record of the subcommittee's hearings. While this report sets forth certain objections to the consolidation of the two activities, a careful reading of the actual study upon which it was based convinces me that these objections are largely superficial and could easily be obviated, and I might add that it seems very significant that no material progress has been made in the period of nearly 2 years which has elapsed since this study was made by the services.

In view of the foregoing, I would like to recommend strongly your favorable consideration of recommendation No. 3 in the attached report.

I do not know whether or not you may desire to have the new committee formally adopt this report, or whether you will wish to have it printed. However, I would like to suggest that such action be taken as will permit notification of the Secretary of the Navy as to the results of the investigation, inasmuch as he was formally advised that this inquiry would be undertaken, by letter dated June 15, 1948.

Sincerely yours,

JACK Z. ANDERSON, M. C.

REPORT OF STAFF INVESTIGATION INTO OPERATIONS OF NAVY SHIPS' SERVICE STORES UNDER CENTRALIZED PROGRAM

SUBCOMMITTEE NO. 6, COMMITTEE ON ARMED SERVICES

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BACKGROUND AND SCOPE OF INVESTIGATION

In accordance with instructions of the chairman of Subcommittee No. 6 on Procurement and Supply, Hon. Jack Z. Anderson, of California, an investigation into the operation of the Navy ships' service store program was conducted during the recess period by a member of the professional staff. This investigation was concerned primarily with the role played in that program by the Navy Ships' Store Office, an agency of the Bureau of Supplies and Accounts to which has been delegated responsibility for general supervision of the operations of individual ships' service stores throughout the Naval Establishment. The Navy Ships' Store Office maintains its office in Brooklyn, N. Y.

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The investigation covered by this report dealt solely with the relationship between the central office in Brooklyn and individual ships' service stores located at various naval stations throughout the country and related in no way to recent complaints which have reached the committee concerning alleged unfair competition by Army and Navy stores with civilian retail enterprise.

The present inquiry addressed itself primarily to the question whether the Navy Ships' Store Office fulfills a useful and necessary function in the successful operation of the over-all ships' service program or whether, on the other hand, it affords the means for an unnecessary and undesirable centralization of control over local stores, particularly in connection with their procurement activities.

As a corollary to the principal question, the investigation sought also to determine whether satisfactory operating relationships exist between the central office and activities in the field. In addition, an effort was made to ascertain whether any evidence was available which would tend to supplement or destroy certain evidence previously received by the committee in support of allegations to the effect that personnel in the program were not giving their full support to a directive issued by the Navy Department in July 1947 at the request of Subcommittee No. 6. Further reference will be made in this report to the above directive and to alleged violations thereof.

The present investigation was conducted against a background of hearings held by the committee in 1947 as a result of complaints by wholesalers, jobbers, and other distributors who claimed that they had formerly supplied ships' service stores at a time when these stores were operated individually, prior to the institution of a centralized system under the direction of the Navy Ships' Store Office in New York. These suppliers alleged, however, that since the "take-over" of the stores by the Bureau of Supplies and Accounts and its operating agency, the Navy Ships' Store Office, they had found it extremely difficult to do business with the stores.

In July 1947, upon the conclusion of the hearings before Subcommittee No. 6, a resolution was adopted by the full committee requesting the Navy Department to take immediate steps to decentralize control over the procurement of merchandise for resale in Navy ships' service stores. The resolution set forth in explicit terms the committee's desire that this control be decentralized from the Navy Ships' Store Office in New York to the local store level.

As a result of the committee's request, the Navy Department proposed the issuance of a new directive which would liberalize existing merchandise procurement policies by granting authority to the local ships' service officer to purchase any item for which he found a local demand to exist and which in his best judgment was a desirable item for resale. This directive provided that no confirmation or clearance of purchase orders need be obtained from the district ships' service officer or the Navy Ships' Store Office in New York but merely required that copies of purchase orders be forwarded to the central office for administrative review. The directive was submitted in draft form by the Navy Department to the subcommittee for its approval prior to promulgation to activities concerned. It was actually issued by the Navy Ships' Store Office under date of July 23, 1947.

Some months later complaints began to be received from various jobbers who alleged that this directive was being violated by officials of the ships' service program through the issuance of contrary verbal

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instructions to the effect that those provisions which permitted local purchase without reference to the central office were to be disregarded. It was alleged, moreover, that a concerted campaign was being conducted by some officials in the program to compel the forwarding of orders to New York for approval prior to purchase, despite the provisions of the July directive which specifically stated that central-office approval was not required. Apparently as a result of complaints made directly to the Undersecretary of the Navy, Hon. W. John Kenney, in October 1947, a further directive, dated October 29, was issued, which restated the provisions in the July directive permitting local purchase and called particular attention to the fact that orders could be placed locally without prior approval by the district ships' service officer or the Navy Ships' Store Office.

Some months after the issuance of this latter directive, complaints were received by the committee to the effect that notwithstanding the existence of both directives continued pressure was being put upon individual stores by the central office to forward all purchase orders for unlisted [1] items to that office for prior approval.

During the early part of this year a number of complainants furnished the subcommittee chairman and staff member with information concerning specific instances of violations of the terms and spirit of the July and October directives. Several conferences were held with a number of potential witnesses who stated that they would be willing to testify under oath as to the violations concerning which they furnished information.

Although the pressure of important legislation and other matters before the full committee did not permit the scheduling of any hearings during the second session of the Eightieth Congress, a letter dated June 15, 1947, was addressed to the Secretary of the Navy by the subcommittee chairman after approval by a majority of the members of the subcommittee. Briefly, this letter set forth the fact that evidence of certain violations had been received and expressed the chairman's keen disappointment over the fact that the entire problem had not yet been brought to a satisfactory conclusion. In addition, the chairman advised the Secretary that the subcommittee had determined to conduct an investigation into the operation of the Navy ships' store office, with a view to determining whether there was any justification for the continued existence of that office and what action, legislative or otherwise, would be necessary to implement the policies laid down in the resolution transmitted to the Navy Department last year.

Investigation in Norfolk Area

For the purpose of obtaining information as to the effect of the operations of the Navy Ships' Store Office at local levels, two visits were made to Norfolk, Va., and the surrounding area, where conversations were had with the commandant of the Fifth Naval District, the Fifth Naval District supply officer, the district ships' service officer, and the ships' service officers and subordinate officials at three of the larger main ships' service stores and an equal number of branch stores. In addition, in nearly all instances, conferences were held with

[1] Refers to items not previously approved for purchase by listing in catalogs issued by the Navy ships' store office and known as price agreement bulletins.

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the commanding officers of the installations at which these stores are located. This area was considered particularly suitable for an inquiry at local levels due to the variety and number of naval activities concentrated in that immediate locality.

Immediately upon arrival in the Norfolk area, it became apparent that a definite line of cleavage exists between the views of many line officers on the one hand and officers of the Supply Corps on the other, regarding the desirability of the present centralized system. The majority—though by no means all—of the commanding officers contacted at activities within the Fifth Naval District, including the district commandant himself, were found to be unfavorably disposed toward the system as it now operates. Officers of the Supply Corps, on the other hand, were unanimously favorable in their comments. Indeed, the attitude manifested by the line officers tended at first blush to give the impression that widespread dissatisfaction with the system existed throughout all commands. However, upon further investigation it developed that while complaints on the part of commanding officers were widespread, many of the objections seemed to arise from a misunderstanding of the purposes and functions of the central office rather than as a result of any inherent fault in the system.

ATTITUDE OF COMMANDING OFFICERS TOWARD PROGRAM

Complaint that local profits must be shared with outside agencies under centralized program

The objections of the commanding officers are varied and numerous. Perhaps the most important is the complaint that a local store is required to pay over a substantial share of its profits to the Navy Ships' Store Office and to the Bureau of Naval Personnel central welfare and recreation fund. The contribution to the central office is fixed at 3 percent of gross sales per month while the amount payable to the Bureau of Naval Personnel is computed in the following manner: First, a store is entitled to retain for its own welfare fund a sum equal to $1.50 per man per month. This amount is calculated upon the basis of the average complement present during the period in question. All profits over and above this figure, excluding, of course, the sum payable to the Brooklyn Office, are divided between the Bureau of Naval Personnel and the local activity in the ratio of two-thirds to one-third.

The 3 percent of gross sales payable to the Navy Ships' Store Office is required in part to pay the administrative expenses of that Office and also to provide certain special reserves.

At one station it was asserted that the payment of 3 percent of gross sales to the central office represented approximately one-third of the profits realized by the store at that particular station. Were this payment not required, it was pointed out, the amount in question could be retained for welfare use at the home station or, on the other hand, if no additional funds were required for local welfare and recreation, the station could pass the benefits of these profits back to its patrons in the form of reduced prices and still retain the same amount of profit for local welfare use as it receives today.

These objections overlook several very important facts. First, only a small percentage of the 3 percent paid to the central office actually accounts for the expenses of that office itself. The bulk of

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this amount is used for various reserve funds which accrue to the benefit of individual stores, such as, for example, funds to be used for providing necessary replacements of equipment at stores. In addition, a large portion of the fund will now be used as a set-aside under a system of self-insurance, whereby the Navy will provide for adequate coverage of all insurance risks to which stores throughout the system may be subject and for which commercial contracts were previously obtained. It has been found that self-insurance will be more economical by far than insurance obtainable from private companies even upon the very best terms possible.

With regard to the complaint that an individual store must share its profits with other activities throughout the Navy by contributing to the Bureau of Naval Personnel central welfare fund, it is significant to note that the two main stores in the Norfolk area are located respectively at the receiving station, naval operating base; and at the naval air station, Norfolk. Both these activities are extremely large and important establishments with a large complement and with numerous dependents quartered either on the stations themselves or in the immediate locality. In addition, each has a large turn-over of transient personnel. It can readily be seen, therefore, that these two stores, with the large volume of business they enjoy, can reasonably be expected to conduct a far more profitable operation than a small isolated activity where the military population remains small and stable. Thus, there is certainly a great deal to say for the argument that large activities of this character should share their profits with those less fortunate. The position taken by the Navy Department is that all ships' service stores at all installations are merely a part of one and the same Navy.

Complaint that prices in stores are too high

Another major complaint by some commanding officers is that prices in ships' service stores are too high. The typical argument encountered in these quarters is that present prices are as high, higher, or almost as high as prices in civilian chain or department stores in the area. However, none of the officers interviewed furnished any specific instances of unfavorable price comparisons between the Navy stores on the one hand and local commercial retail outlets on the other. Moreover, the allegation that prices are as high as those in commercial outlets was vigorously denied by ships' service officers who pointed to the fact that inflation has naturally brought about a considerable rise in ships' service prices as well as all other prices, but that notwithstanding this fact, prices in the Navy stores are maintained at a lower level than those outside. Indeed, an investigation conducted by the commandant of the Fifth Naval District, who is admittedly critical of the program, disclosed that the present scale of prices in ships' service stores is lower than current prices outside.

Further findings by the commandant in the investigation referred to were that prices were higher than formerly, that much of the criticism regarding prices emanated from enlisted personnel and their dependents, and that ships' service stores were not being patronized to the extent they were under the old system of independent operation. On the basis of these findings, the commandant has concluded that ships' service stores today are failing to fulfill their primary mission of providing articles of necessity and convenience to enlisted personnel at the lowest possible cost.

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As for the commandant's finding that prices are higher than formerly this situation is to be expected and is simply a reflection of current inflation in the over-all economy. Moreover, it is inevitable that the pressure of the rising cost of living will be felt most sharply by enlisted personnel since they are the lowest paid group in the service. Furthermore, it is believed that this would largely account for any loss of patronage in ships' service stores, as distinguished from commissaries, where foodstuffs and other items of prior necessity are sold.

Alleged conflict in missions due to high prices

One point, however, which has important policy implications is the conclusion which the commandant draws regarding fulfillment by the stores of their basic mission of providing goods to enlisted personnel at the lowest possible cost. Actually, this is only one of the stated missions of the program; the other mission is to provide a source of welfare funds from nonappropriated moneys. The commandant has suggested the thought that these two missions are mutually inconsistent and that neither can be accomplished except at the expense of the other. This argument is certainly valid from a strictly logical standpoint since it is obvious that lower prices would prevail if the welfare aspect were disregarded and operations were conducted on a wholly nonprofit basis. Over and against this must be considered the fact—and it is submitted that strict logic must be tempered accordingly—that a substantial reduction in prices would undoubtedly produce a storm of complaints from local retail enterprise far exceeding anything which has been heard to date. It would appear, therefore, as is always the case in the solution of military problems, that a workable balance or compromise has been achieved between conflicting forces and objectives.

Some commanding officers seemed to feel that the mere existence of the central office was proof in and of itself that prices are too high. How could it be otherwise, they ask, when one considers the "tremendous overhead" of that office and also the contribution made to the central welfare fund?

It is certainly true, of course, that sales prices of articles sold in ships' service stores are fixed by the Navy Ships' Store Office; and it is also true that these prices must be sufficiently high to provide for the required assessments payable to the central office and to the Bureau of Naval Personnel and also to provide at the same time funds for the home station's welfare and recreation program. On the other hand, none of the arguments by those who object to high prices take into account the economies in accounting, auditing, insurance, and procurement of merchandise which have resulted from the central operation.

The claim was made in several quarters that because prices are too high, sales have fallen off and as a result insufficient income is now being obtained for welfare and recreation. This argument, however, is entirely at variance with reports of profits shown in operating statements and it is significant to note that sufficient funds have now been accumulated out of profits throughout the entire system to permit the Navy to act as self-insurers in connection with all insurance risks incident to the operation of the ships' service program.

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Complaint that control over sales prices should be restored to commanding officer

Throughout most of the arguments concerning alleged high prices and the draining off of profits to outside activities, one detects a very keen resentment on the part of commanding officers over the fact that they have been divested of the control which they formerly exercised over the operation of individual ships' service stores. One phase of this control under the old system was the commanding officer's power to regulate the prices charged in his ships' service store. Commanding officers regarded—and many still regard—this power as a necessarily inherent prerogative which goes hand in hand with a commanding officer's responsibility for the maintenance of morale at his station. Thus, under the old regime of independent operations, commanding officers often employed this power for morale purposes by reducing prices on cigarettes, haircuts, or other articles or services falling into the category of necessities, whenever profits in some other department were sufficiently high to permit a subsidy of this character.

While arguments for the restoration to the commanding officers of control over prices have considerable appeal on the surface, it was pointed out by ships' service officers that it is a thoroughly unsound practice from a business standpoint to allow any one department to run at a loss. This is true because the operating margins in certain departments, notably the laundry and canteen, are extremely narrow. These are typical departments in which control of prices by the commanding officer for morale purposes might be appropriate,yet—as one officer at the operating level pointed out—the laundry is generally the first department likely to show a deficit, while the operation of the canteen at a loss for only a few days can very easily outweigh profitable operations in all other departments, thus resulting in a net loss for the entire store. This is true because profitable operation of the canteen depends primarily upon volume since operating costs are extremely high, amounting to between 20 and 25 percent of gross sales exclusive of the cost of goods sold.

Other complaints by commanding officers

Some commanding officers expressed disapproval of the present system on the ground that supervision by the central office was productive of administrative arguments and consequent loss of time, which was alleged to arise mainly from the fact that the central office does not fully understand local problems. Conversations with local store officials disclosed little or no evidence in support of these allegations insofar as operations at the present time are concerned. However, it was very apparent that there has been a noteworthy change in the character of relations between local stores and the central office in recent months. This change was frankly attributed in the opinion of some local store officials to the assignment last summer of Rear Adm. A. A. Antrim (SC), United States Navy, as officer in charge of the Navy Ships' Store Office in Brooklyn. Local officials, in referring to improvements which have gradually taken place over a period of several months, did not hesitate to make it known that the present situation affords a sharp contrast with that which existed about a year ago. A number of these local store officials corroborated some of the charges which had previously been made to the committee with regard to operations in the latter half of 1947. With regard to operations at the present time, however, they made it clear that they now

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feel perfectly free to procure locally any merchandise for which they believe there is a demand. These officials also pointed out that there formerly existed considerable ill will at the local level because of the preemptory character of correspondence emanating from the central office. But this situation also, they stated, has definitely been corrected.

From the foregoing, it would appear that the complaints of some commanding officers about administrative arguments between local stores and the New York office are well founded insofar as they apply to the situation which prevailed about a year ago. However, it is believed that the basis of this complaint has largely been eliminated today.

Another view expressed at the local command level was that the centralized system was uneconomical on the ground that it cost more money in the long run to operate the entire system than would be the case if local stores were operated independently. However, this proposition was not stated as a fact but merely as a belief. No evidence was cited in support of this position, and it is extremely doubtful that the present advantages inherent in the centralized system, particularly in connection with accounting and the maintenance of necessary records, could be provided if each store were to operate as an individual entity.

Other complaints by commanding officers were as follows: That the New York office attempts to prescribe local merchandise policies; that it indulges in arguments with the stores as to types of merchandise which should be carried and also as to the quantities which ought to be carried; and, finally, that the central office itself purchases and ships certain items for the account of local stores.

First of all, it may be said that the New York office very definitely prescribes local merchandise policies to the extent that it requires that certain ratios of stock in inventory as against stock turn-over be maintained. The maintenance of these ratios is extremely important to the successful operation of any merchandising venture. Inventories of slow-moving merchandise cannot be permitted to accumulate but must be disposed of even though this may necessitate taking radical mark-downs. Moreover, if a store happens to be overstocked in a particular item, or even in a particular department, sound policy demands that that store be not permitted to increase stocks of such items until such time as these inventories are reduced to reasonable levels.

The New York office maintains a stock-control system, based on reports from the stores, from which it is possible to determine the current inventory position of any store and thus to determine its "open to buy" position. If a store's inventory position is such as to indicate that replenishments of a particular item are appropriate, it is said that that store has an "open to buy" position of a specified amount.

The New York office very definitely attempts to discourage the procurement by a store of merchandise in cases where such procurement would adversely affect a store's inventory position. When orders are placed locally, with copies only being sent to the central office, there is often no way in which that office can prevent the consummation of an individual purchase order before the purchase has become an accomplished fact. However, the central office will immediately take the matter up with the store and caution the store

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officer against overextending himself in the future. On the other hand, officials at the local store level as well as those in the central office stated categorically that no objection is made to the purchase of merchandise locally where the inventory position of the store is satisfactory and the ships' service officer deems the item a suitable one for resale.

As for the complaint that the New York office purchases and ships certain items to stores without any request having been made, inquiry disclosed that this is done only in the case of a few local stores known as sample stores, which have been so designated for the express purpose of testing sales appeal of trial merchandise.

Another complaint encountered in the Norfolk area related to qualifications of field personnel at the district level. This criticism had its basis in certain incompatible personality relationships which no longer exist and, therefore, can be disregarded in the present inquiry.

ATTITUDE OF LOCAL STORE OFFICIALS TOWARD PROGRAM

Ships' service officers and their civilian assistants at stores visited in the Norfolk area were found to be unanimous in their support *of* the present program. Even those individuals who were inclined to be critical of the central office freely admitted that their antagonism was a hold-over from a period several months or a year ago when they were continually subject to censure in their day-to-day operations by the New York office. All were agreed, however, that a marked improvement in relations had taken place in recent months and that operations are functioning very smoothly at the present time.

As has already been indicated, some of the local store officials attributed the change in conditions to the appointment of Admiral Antrim as officer in charge of the Navy Ships' Store Office. Others observed quite frankly that Admiral Antrim's appointment and the general improvement in the relationship between the stores and the central office may very well have taken place only because of the active interest shown by Subcommittee No. 6 in the operation of the program.

These officials expressed complete confidence in Admiral Antrim and voiced the expectation that conditions would steadily improve under his administration. Some of them ventured so far as to express the hope, however, that these changes for the better would prove to be enduring in the distant future after Admiral Antrim has left the program and after the committee's attention has ceased to be focused upon this particular problem.

ADVANTAGES OF CENTRALIZED OPERATION

Local store officials unanimously expressed the hope that the committee would take no action which would result in a return to the old system of operations. Even those who were unsparing in their criticism of certain aspects of the central program as it has operated at various periods in the past were emphatic in calling attention to the following benefits which have resulted from the centralized operation:

1. Responsibility for the operation of stores has been lifted from the shoulders of commanding officers who by training are hardly equipped to operate a mercantile enterprise and has been placed where it belongs—upon the Supply Corps.

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2. Commanding officers have been relieved of the burden of financial responsibility which they formerly sustained in the event of defalcations on the part of those whom they designated as ships' service officers.

3. The establishment of clear-cut procedures and lines of responsibility, together with regular methods of reporting accounting information and other operating data, has resulted not only in sounder, more businesslike operations, but it has also thrown protections around ships' service officers themselves which they did not enjoy under the old system. It has largely eliminated opportunities for venality and corruption, thereby removing temptations in this direction, and has provided safeguards for the local store officer against the more serious consequences of his own errors of judgment. Indeed, so essential are these safeguards deemed to be for the protection of an officer's career, that several of the ships' service officers who were interviewed declared that they would seek to be detached from the program immediately if these safeguards were removed.

4. Advice furnished by the central office as to available merchandise and appraisals thereof as to price and quality are an invaluable aid to local store officials because they furnish a guide or standard of reference against which to compare offerings in the local market. This is true not only of the price-agreement bulletins which list items available under Nation-wide open-end contracts entered into by the Navy Ships' Store Office for the benefit of local stores, but is also true of the flash bulletins periodically issued by the central office. Moreover, local store officers say that they appreciate being able to obtain the advice of experienced buyers regarding new or untried articles as to whose salability they themselves may entertain some uncertainty.

Despite hostility on the part of some of the commanding officers, the commanding officers contacted agreed without exception that it was a very fine thing that commanding officers had been relieved of the financial responsibility incident to the operation of the stores. Indeed, it has been discreetly suggested that the commanding officers were only too happy to be relieved of the burdens incident to operation of the stores but at the same time were loath to surrender the accompanying authority and prerogatives which they had formerly enjoyed in connection with these operations. A notable exception was the commanding officer of one of the larger activities in the Fifth Naval District who expressed himself as thoroughly satisfied with the present system, first, because it has relieved him of financial responsibility and, secondly, because he does not feel that a commanding officer's time should be taken up with day-to-day surveillance over the routine operations of a merchandising activity. Recognizing the fact that authority and responsibility must go hand in hand, he stated that he was very glad to have his store operated under the supervision of the Navy Ships' Store Office and that it was sufficient from his point of view if he were merely kept advised in a general way as to the manner in which the store was being operated.

EVIDENCE BEARING ON ALLEGED VIOLATIONS OF DIRECTIVES SETTING FORTH POLICIES PREVIOUSLY DECLARED BY THE SUBCOMMITTEE

Information received from ships' service officers and other local store officials in the Norfolk area tended to corroborate evidence here-

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tofore received by the committee to the effect that some officials in the program had issued verbal instructions which were in conflict with the provisions permitting local purchases which were contained in the July 1947 directive. In each instance the official who issued the contrary verbal instructions was credited with having made the observation at the time that the directive was merely the result of "political pressure" and hence was to be disregarded. However, all of the instances referred to took place a year or more ago, and no evidence whatsoever was obtained tending to indicate recurrences of such violations within the last 12 months.

EXTENT OF LOCAL PURCHASES TODAY

Ships' service officers and subordinate officials at stores in the Fifth Naval District stated categorically that they now feel perfectly free to make purchases locally without fear of repercussions from the New York office, provided, of course, that their inventory position justifies such purchases and that the merchandise in question is an item which is authorized for resale in Navy stores. By way of illustration, one officer cited the fact that 75 to 80 percent of all appliances and 90 percent of all jewelry sold by his store were purchased locally.

These officers without exception stated that all suppliers, regardless of trade level, are welcome and can do business with their stores provided they are able to compete with others on the basis of price, quality, and availability. In this connection it was ascertained that many articles currently carried in stock in ships' service stores in the Norfolk area are regularly procured through some of the distributors who have complained concerning the centralized operation.

INVESTIGATION AT THE CENTRAL OFFICE LEVEL

Following the visits made to local activities in the Norfolk area, the current inquiry was continued at the central office level by a visit to the Navy Ships' Store Office in Brooklyn, N. Y.

Particular attention was devoted during this phase of the investigation to the following questions:

1. Does the central office actually exercise ultimate control over the selection of merchandise stocked by the stores?
2. To what extent, if any, does the central office attempt to prevent the procurement of merchandise which a local officer considers desirable but which it disapproves of on grounds of price or quality?
3. What is the precise nature of the merchandising functions performed by the buyers in the New York office?

First of all, it should be borne in mind that the entire dispute over the procurement of merchandise locally has revolved around the procurement of so-called "unlisted items"; that is, items which are not listed in price-agreement bulletins issued by the Navy Ships' Store Office. Items which are so listed have, of course, been previously approved by the central office, inasmuch as they are covered by contracts entered into by that office with suppliers.

Accordingly, the first step in the New York investigation was an attempt to determine the extent to which orders for unlisted items are channeled to the New York office prior to the consummation of purchases. This refers, of course, to the transmittal of the original

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purchase order, as distinguished from the mere copies forwarded to the central office for administrative review after the fact.

By the terms of the July and October 1947 directives, there is no requirement whatsoever that local purchase orders be submitted for central office confirmation or review prior to completion of a purchase. Officials in the New York office stated categorically that no attempt whatsoever is made to induce local store officers into sending such orders to New York. However, they point out that there is nothing to prevent the local officer from referring an order to New York for prior advice in cases where he is not certain whether the item is a desirable one from the standpoint of price, quality, or other factors. In these cases, it is considered that no order has been originated by the local store inasmuch as the ship's service officer has, in effect, delegated the initiation of the purchase order to the central office.

As to the question whether pressure is exerted upon the local stores to compel them to forward orders for unlisted items to New York, the investigation disclosed that only about 5 percent of the total number of orders for unlisted merchandise is forwarded to that office. This figure is merely an estimate, as no exact statistics on this point are maintained. However, this estimate was confirmed by several sources in the central office.

It was further ascertained that out of the 5 percent thus forwarded to the central office, very few purchase orders are changed in any way, the majority being approved without alteration and forwarded directly to the supplier by the Navy Ships' Store Office. In those few instances where some of the items in a purchase order are disapproved, this action is taken for one or more of the following reasons:

1. The central office knows that the particular item is currently unavailable from the source specified in the order.
2. The item is overpriced.
3. The item is unauthorized.
4. An unbalanced stock condition exists.
5. The item is an undesirable one, (*a*) from the standpoint of good taste—although not necessarily unauthorized, or (*b*) because it is known from previous experience to be a poor seller.

In this connection, Admiral Antrim stated that he personally reviews all instances where an item is crossed off a purchase order.

All of the above information leads to the conclusion that the answers to the first two questions pursued in the New York inquiry are:

1. That the central office does not exercise restrictive ultimate control over the selection of merchandise stocked by the stores; and
2. That it prevents the procurement of merchandise desired by a local store only in a very few instances and then only for obviously sufficient business reasons.

In an effort to ascertain the precise nature of the merchandising functions performed by the New York office considerable attention was given to the question how selections of merchandise are made by the buyers. It was ascertained, for example, that costume jewelry was selected in the following way:

Costume jewelry, according to the custom of the trade, is a strictly seasonal item. Two new lines are offered annually, one in the spring and the other in the fall. New lines customarily make their first appearance on the market at a jewelry show at which most manufacturers and many jobbers and distributors exhibit their wares.

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It is one of the duties of the jewelry buyer at the Navy Ships' Store Office to attend shows of this type and to examine anywhere from 150 to 200 different lines of merchandise, comparing them as to price and quality. From all the merchandise examined, the buyer selects several lines which he or she considers the best-made, best-priced, and best-styled offerings in each given category.

Samples of these are hand picked by the buyer and are segregated and grouped according to lines. Each group is then presented by the buyer to the merchandise council, a three-man committee whose membership comprises the senior civilian employee of the Navy Ships' Store Office, Mr. Joseph Emma, and two of his principal assistants. The council compares the various lines previously selected by the buyer in each group and makes a determination as to which of these items should be listed in the price-agreement bulletins.

In addition to the merchandise which may be selected at the jewelry shows, examination is made from time to time of samples offered by salesmen who contact the central office. Such merchandise is evaluated in the same manner.

A number of interesting facts were brought to light in connection with the procurement of watches for resale in Navy ships' service stores. From a merchandising standpoint watches fall into two categories; namely, "dress" watches and "military" watches. The first group consists of the well-known brand names, and experience has demonstrated that these types are purchased by the customer entirely on the basis of a brand name made popular by extensive advertising, with little or no attention being paid to quality. Military watches, on the other hand, sell because of the fact that they are military watches and also upon the basis of price. The manufacturer's name usually passes unnoticed by the customer. Because of the difference in approach by the buying public, it is necessary to follow entirely different procedures in the purchase of these two items. Thus, well-known brands are procured wherever they may be obtained most cheaply and without the need for any evaluation as to quality. Military watches, on the other hand, are carefully examined by experienced watchmakers to determine whether genuine movements of good quality are contained in the cases. Moreover, tests are made to determine whether the cases themselves are waterproof and whether they are made of stainless steel and otherwise of good quality. In this connection, it was stated that a number of watchcases on the market are made of bronze with an imitation stainless steel or chromium finish. Such materials are unsuitable because they are subject to corrosion by salt air.

In the case of well-known brands, it is the policy of certain watch manufacturers to sell only to certain specified jobbers. In addition, some of these manufacturers require that their jobbers absorb stated quotas periodically and will terminate or reduce the allocation of watches to a particular jobber in the event that he fails to keep his inventory moving. It has, therefore, become the practice of some jobbers, in order to avoid embarrassment with the manufacturers, to sell their overstocked inventories at a sacrifice, if necessary, to any outside distributor who will take the merchandise off their hands. As a result, distributors outside the manufacturer's normal trade channels are often able to offer the same watches at a considerably lower mark-up than that at which they are offered to the ships' service stores by the regular jobbers who normally handle these lines. Thus, although

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the jobbers may add a 30-percent mark-up to the manufacturer's cost, it is often possible for the Navy ships' service stores to obtain the same brands at a mark-up of only 10 percent.

This situation has naturally caused considerable resentment on the part of certain of the regular jobbers. They contend that many of the distributors offering merchandise at these lower mark-ups are financially irresponsible, and they have furnished evidence to the effect that at least one of these distributors does not even maintain an office and is unknown to Dun & Bradstreet. The Navy Ships' Store Office, on the other hand, takes the position that merchandise should be obtained at the lowest prices at which it is available, and that any complaints arising from this situation ought not to be directed at the Navy Ships' Store Office but should be taken up by the jobbers with their own suppliers—namely, the manufacturers—on the ground that they are failing properly to police their own distribution system.

The jewelry buyer stated categorically that local stores may sell any item for which there is a local demand, and that this is true even in the case of items for which there is no general demand throughout the country. The example was cited of a California concern which manufactures copper jewelry. No demand exists in the East for this type of merchandise but a substantial demand does exist in the West. In view of this regional demand, local stores in western areas are permitted to stock copper jewelry items.

The question was raised whether the central office ever procures or *furnishes* merchandise to local stores without any request having been *made* for such merchandise. It was stated categorically that the only time when jewelry is procured and furnished to a store without its request is in the case of a few stores scattered throughout the country which are designated as "sample stores." It is the practice to procure trial merchandise in small quantities and to furnish it to these stores for the purpose of obtaining sales experience. However, such articles are clearly designated as samples and the central office assumes responsibility for the success or failure of efforts to sell them.

The jewelry buyer expressed the opinion that jewelry items carried in the stores today are far superior to those available under the old system. The example was cited of one store which still has a large inventory of jewelry items which have been in stock ever since the time of take-over 2 years ago. A large portion of this merchandise is gold-filled jewelry, which the stores have had poor experience with in the past due to the fact that it changes color. Notwithstanding this fact, however, the jewelry buyer at the Navy Ships' Store Office emphasized the fact that even items of this type may be stocked by a store if the ships' service officer finds that there is a local demand. In that event, the central office has no authority to prevent the stocking of such merchandise and no attempts in this direction are ever made under the procedures in effect at the present time.

The question was raised whether it is ever the practice of the central office to request local stores to furnish a list of their requirements for jewelry items. A negative answer was received insofar as all jewelry items are concerned, with the single exception of military watches. It is necessary to ask the stores to list their requirements for this type of watch due to the extreme scarcity of military watches and also because of the fact that orders for the movements for these watches must be placed in Switzerland about 1 year in advance of delivery.

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The jewelry buyer expressed the opinion that merchandise listed in the price-agreement bulletins has improved steadily, and that it is better today than ever before. She also pointed out that every effort had been made to assure an equitable representation for all buyers listed. This has been done by allocating the same number of pages in the bulletins to each manufacturer or other supplier listed. Whereas formerly one concern might have had five or six lines listed and another firm only one line, all suppliers now have approximately the same number of listings.

Conclusions

In view of all the above, the inescapable conclusion is reached that today the Navy's ships' service system is operating in a generally satisfactory manner. It is also equally obvious that the conditions today are a vast improvement over the inflexible, unjust, and overcentralized system which obtained a year or more ago, a change for which the efforts of Subcommittee No. 6 may be considered largely responsible. Today, the local ships' service store is free to make local purchases which are consonant with good business practices, yet it enjoys the advantages of centralized accounting, centralized procurement where it is advantageous, centralized inventory control, centralized insurance, and the over-all supervision of merchandising experts.

One sure indication of the improved situation lies in the fact that local jobbers and wholesalers, who complained loudly during the year 1947 that they were unable to do business with the Navy, have now reduced their complaints to a relatively low whisper. While they will not admit that the situation has been altered to their complete satisfaction, it is obvious that these small-business men are again able to carry on, as they had not been able to during the period of overcentralization.

A subsidiary conclusion is that a change in the personnel at the Navy Ships' Store Office has had a great deal to do with smoothening the troubled waters. Greater familiarity with the new system, and greater understanding of its intent, at both central office and local levels has also contributed to the improvement.

Recommendations

1. That no fundamental changes be made in the current organization and procedures of the Navy Ships' Store Office.
2. That the operations of that office be kept under general surveillance by the Committee on Armed Services during the Eighty-first Congress to insure that the present situation does not deteriorate at some future date.
3. That the committee consider the desirability of a comprehensive inquiry into the following question which was beyond the scope of the present investigation, viz., the desirability of a merger—or a unification of procedures short of merger—of the Navy Ships' Store Office with the Army and Air Force Exchange Service.

Respectfully submitted.

Clinton B. D. Brown,
Member, Professional Staff.

Approved.

Jack Z. Anderson.
Member, Committee on Armed Services.

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[No. 4]

TO AUTHORIZE THE ESTABLISHMENT OF A JOINT LONG-RANGE PROVING GROUND FOR GUIDED MISSILES, AND FOR OTHER PURPOSES (H. R. 1741). MR. BROOKS

THE SECRETARY OF DEFENSE,
Washington, Jan. 14, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Secretary of the Air Force recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To authorize the establishment of a joint long-range proving ground for guided missiles, and for other purposes."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Air Force.

Sincerely yours,

JAMES FORRESTAL.

Attachments (2).

DEPARTMENT OF THE AIR FORCE,
Washington, January 7, 1949.

The SPEAKER,
House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith draft of a bill to authorize the establishment of a joint long-range proving ground for guided missiles, and for other purposes, which the Department of the Air Force recommends be enacted into law. The Secretary of Defense has assigned responsibility for the preparation and submission of this measure, on behalf of the National Military Establishment, to this Department. This proposed measure is similar to S. 2761, introduced in the second session of the Eightieth Congress.

The purpose of the proposed legislation is to provide substantive law authorizing the Secretary of the Air Force to acquire, construct, and equip a joint long-range proving ground. This proving ground is required primarily for the development and testing of guided missiles of ranges greater than 150 miles, and for subsequent training of personnel. The proposed bill, upon enactment, will serve as a basis for requesting appropriations for the establishment of such joint long-range proving ground and for such additional bases and ranges as may be later determined to be necessary.

The field of guided missiles is still within its infancy. Certain other nations have availed themselves of the services of German scientists and technicians and are making vigorous efforts to produce

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guided missiles of intercontinental ranges. It will not suffice for the United States to merely keep abreast of or equal the efforts of other nations; but, in order that this Nation may survive, it will be necessary for the United States to take the lead in this new field. Accordingly, there is an immediate and urgent necessity for acquiring, constructing, and equipping a land-based proving ground where guided missiles, now under development and scheduled for tests in the near future, can be flight tested at long ranges.

The entire question of a guided-missile proving ground where missiles with ranges in excess of 150 miles could be tested was referred by the Joint Chiefs of Staff to the Joint Research and Development Board upon the establishment of that Board in July 1946. A committee, in which all three services had equal representation, was formed on October 7, 1946, with the specific objective of "examining the entire question of a single, national, long-range guided-missile proving ground." This committee submitted a report to the Joint Research and Development Board on June 20, 1947, recommending the immediate establishment of a joint long-range proving ground and, as a result of the recommendation, the Board, in letters addressed to the Secretaries of War and Navy, approved the establishment of a long-range proving ground for guided missiles and allocated the responsibility for acquiring, building, and equipping the range to the War Department.

Since the enactment of the National Security Act of 1947 the responsibility has been reassigned to the Department of the Air Force. A joint executive group, embodying equal participation by the Army, Navy, and Air Force, has been established to pursue the project.

In order to meet the requirements of the guided-missile programs of the three armed services, it is essential that this range be in operation at the earliest possible date. The Department of the Army and the Department of the Navy join with the Department of the Air Force in urgently recommending the enactment of this legislation.

This proposed bill has been coordinated among the departments and boards in the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The fiscal effect of the proposed legislation is manifest in that there is authorized the expenditure of not more than $200,000,000 to carry out the purposes of this act.

The Bureau of the Budget has been consulted and advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely,

W. STUART SYMINGTON.

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[No. 5]

TO AMEND SECTION 19 OF THE ACT OF AUGUST 13, 1946 (60 STAT. 1057), SO AS TO REMOVE THE UPPER AGE LIMIT FOR APPOINTMENT TO COMMISSIONED GRADE IN THE SUPPLY CORPS OF THE NAVY (H. R. 1748). MR. DURHAM

THE SECRETARY OF DEFENSE,
Washington, January 13, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Navy recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To amend section 19 of the Act of August 13, 1946 (60 Stat. 1057), so as to remove the upper age limit for appointment to commissioned grade in the Supply Corps of the Navy."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Navy.

Sincerely yours,

JAMES FORRESTAL.

Attachments (2).

THE SECRETARY OF THE NAVY,
Washington, January 3, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

MY DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to amend section 19 of the act of August 13, 1946, (60 Stat. 1057), so as to remove the upper age limit for appointment to commissioned grade in the Supply Corps of the Navy.

The purpose of the proposed legislation is to remove the present 25-year upper age limit for appointment to commissioned grade in the Supply Corps of the Navy.

Under present circumstances the existing maximum age limit has become unduly restrictive. Many of the recent college graduates and those who will graduate within the next several years are veterans. Their ages are well above the prewar average and in many cases they are, therefore, ineligible for appointment in the Supply Corps under existing law. The 25-year age restriction also prevents the appointment of some Naval Academy graduates who, upon graduation, may not be physically qualified as line officers.

A further reason for amending the present section 19 arises out of its inconsistency with other statutory provisions. While the act of August 13, 1946, pertains to the procurement of officers from civilian

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sources, and section 19 would be construed as a restriction on that source only, section 6 of the act of July 22, 1935 (49 Stat. 487), and section 404 of the act of August 7, 1947 (61 Stat. 795), which pertain to appointments from personnel already in the Navy, contain no similar limitation. The 1935 act, authorizing transfers of line officers to the various staff corps, expressly provides that such transfers may be made regardless of age. The 1947 act, in its provisions for limited-duty officers to be appointed from warrant and enlisted grades, requires a minimum of 10 years' service in the Navy but sets no limitation as to age. While these two acts do not conflict with section 19 of the act of August 13, 1946, the latter is inconsistent with them for it results in different age requirements for appointment to commissioned grade in the Supply Corps depending upon the source of the appointment.

The Navy Department has been designated by the Office of the Secretary of Defense to sponsor this proposal on behalf of the National Military Establishment and accordingly recommends its enactment.

This report has been coordinated within the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

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[No. 6]

TO PREVENT RETROACTIVE CHECKAGE OF PAYMENTS ERRONEOUSLY MADE TO CERTAIN RETIRED OFFICERS OF THE NAVAL RESERVE, AND FOR OTHER PURPOSES (H. R. 1761). MR. KILDAY

THE SECRETARY OF THE NAVY,
Washington, January 3, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

MY DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to prevent retroactive checkage of payments erroneously made to certain retired officers of the Naval Reserve, and for other purposes.

The proposed legislation has a dual purpose. The primary purpose is to prevent checkage of payments made to certain officers of the Naval Reserve supposedly as retirement pay. The secondary purpose is to permit officers of the Naval Reserve, heretofore or hereafter placed on the honorary retired list, to avail themselves of the retirement benefits of sections 6 and 7 of the act approved February 21, 1946 (60 Stat. 27; 34 U. S. C. 410 (b) and 410 (c)), if they meet the service requirements specified therein.

The officers who would be affected by the primary purpose of the proposed bill were placed on or transferred to the honorary retired list of the Naval Reserve, without pay, prior to World War II under the provisions of the Naval Reserve Act of 1938, as amended (34 U. S. C. 855h). They subsequently served on active duty through the war, thereby acquiring sufficient active-duty credit to complete more than 20 years of active service. Accordingly, the retirement status of each was modified pursuant to section 6 of the act of February 21, 1946, and payments made as retirement pay pursuant to section 7 of said act. Said sections 6 and 7 read in part as follows:

SEC. 6. When any officer of the Regular Navy or * * * the Reserve components thereof has completed more than twenty years of active service * * * at least ten years of which shall have been active commissioned service, he may at any time thereafter * * * be placed upon the retired list on the first day of such month as the President may designate.

SEC. 7. (a) Each officer retired pursuant to the foregoing sections * * * shall be placed on the retired list with the highest rank * * * held by him while on active duty * * *. Officers retired pursuant to the foregoing sections * * * shall receive retired pay at the rate of 2½ per centum of the active-duty pay with longevity credit of the rank with which retired, multiplied by the number of years of service for which entitled to credit in the computation of their pay while on active duty, not to exceed a total of 75 per centum of said active-duty pay * * *.

It was considered at the time that although they had been previously placed on the honorary retired list, this fact would not be a legal obstacle to their "reretirement" with pay under the aforementioned

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act of February 21, 1946; hence, upon their own applications, they were placed on the retired list with pay.

In a decision dated May 6, 1947 (B–63359), the Comptroller General of the United States held that the action taken in the cases of these officers was not permitted by law; that they were not considered as being included within the provisions of section 6; and that they were not entitled to retirement, with pay, thereunder. These officers are, therefore, subject to checkage for all amounts they received supposedly as retirement pay.

The General Accounting Office has agreed to withhold checkage action pending initiation by the Navy Department of remedial legislation. The number of officers so involved is very small (three living and one deceased), but it is felt that since the reretirement of these officers was attempted in good faith and they accepted payments believed to be legal, such action should be validated. The total amount of checkage involved in the case of the above-mentioned four officers is $15,778.47. It is believed that the number of officers who will benefit from the secondary purpose of the proposed legislation will be very small.

The Navy Department recommends enactment of the proposed legislation.

An identical report has been transmitted to the Speaker of the House of Representatives this date.

The Departments of the Army and Air Force have no objection to the submission of this proposed legislation.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

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[No. 7]

TO AUTHORIZE THE ADVANCE ON THE RETIRED LIST OF LT. JOHN T. McDERMOTT, UNITED STATES NAVY (RETIRED), TO THE GRADE OF LIEUTENANT COMMANDER (H. R. 1793). MR. COLE OF NEW YORK

THE SECRETARY OF THE NAVY,
Washington, January 3, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to authorize the advance on the retired list of Lt. John T. McDermott, United States Navy (retired), to the grade of lieutenant commander.

Lieutenant McDermott entered the Naval Academy as a midshipman on May 31, 1916, and was commissioned as an ensign on June 7, 1919. He served on the active list of the Navy successively in the grades of ensign, lieutenant (junior grade), and lieutenant until June 30, 1941, on which date he was transferred to the retired list pursuant to section 12 (k) of the act of June 23, 1938 (52 Stat. 950), as amended by the act of October 14, 1940 (54 Stat. 1174, 1175), by reason of having twice failed of selection as lieutenant commander. On that same date he was advanced to the grade of lieutenant commander with retired pay of that grade in accordance with the second proviso of the said section 13 (k), as interpreted by the Navy Department, which provides:

> That lieutenants who served in the Navy or Naval Reserve Force prior to November 12, 1918, and who shall have completed not less than twenty-one years of service, and who subsequent to June 23, 1938, have been or shall hereafter be retired under any provision of law, shall be advanced to the grade of lieutenant commander on the retired list, effective from date of retirement with the retired pay of that grade.

The Assistant Comptroller General, however, has held (B–61756, dated January 8, 1947) that a lieutenant of the Navy whose only service prior to November 12, 1918, was that of a midshipman at the Naval Academy may not be regarded as having served in the Navy or Naval Reserve Force prior to November 12, 1918, within the meaning of the said section 12 (k). Although the said section 12 (k) was specifically repealed by section 436 (g) of the act of August 7, 1947 (Public Law 381, 80th Cong.), such repeal is not pertinent in view of said Assistant Comptroller General's decision that section 12 (k) does not apply to Lieutenant McDermott.

As a result of the Assistant Comptroller General's decision that Lieutenant McDermott's advancement to the grade of lieutenant commander was erroneous and that his status on the retired list is that of a lieutenant, this officer now finds himself indebted to the Govern-

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ment in the amount of approximately $2,300. The Navy Department considers that checkage of the retired pay of this officer to satisfy such an indebtedness would be unjust.

The purpose of the proposed legislation is to legalize the action of the Navy Department in advancing Lieutenant McDermott to the grade of lieutenant commander and remove the necessity for checkage of his retired pay.

The Navy Department, accordingly, recommends enactment of the proposed legislation.

It is estimated that enactment of the proposed legislation will result in a cost of approximately $2,300 to the Government.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

(S) W. JOHN KENNEY,
Acting Secretary of the Navy.

Enclosure.

A BILL To authorize the advance on the retired list of Lieutenant John T. McDermott, United States Navy (retired), to the grade of lieutenant commander

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, Lieutenant John T. McDermott, United States Navy (retired), shall be advanced to the grade of lieutenant commander on the retired list effective for all purposes from the date of his retirement.

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[No. 8]

RELATING TO THE PAY AND ALLOWANCES OF OFFICERS OF THE NAVAL ESTABLISHMENT APPOINTED TO PERMANENT GRADES (H. R. 2425). MR. VINSON

THE SECRETARY OF DEFENSE,
Washington, January 26, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Navy recommending the enactment of a proposed draft of legislation, also attached, bearing the title "Relating to the pay and allowances of officers of the Naval Establishment appointed to permanent grades."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the establishment has been placed in the Department of the Navy.

Sincerely yours,

JAMES FORRESTAL.

THE SECRETARY OF THE NAVY,
Washington, January 3, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

MY DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill relating to the pay and allowances of officers of the Naval Establishment appointed to permanent grades.

The purpose of the proposed legislation is to enable the Navy Department to effect an equitable adjustment of lineal precedence for officers of the Navy, Marine Corps, and the Reserve components thereof, in the issuance of permanent appointments, without giving rise to claims for back pay and allowances in certain cases.

The act of June 30, 1942 (56 Stat. 463), suspended the provisions of law relating to the permanent promotion of naval officers; after June 30, 1942, and until the enactment of the Officer Personnel Act of 1947, promotions and advancements effected were of a temporary, as distinguished from permanent, nature. The said Officer Personnel Act (sec. 426 (a)). repealed the suspending provisions of the June 30, act, and, by section 304 (a) thereof, required that "As soon as practicable, but not later than thirty days after the date of approval of this Act, the Secretary of the Navy shall establish a single lineal list of all officers of the grade of ensign and above of * * * the Navy or Naval Reserve on active duty on the date of establishment of such list, and such lineal list shall constitute the order of seniority of such officers as of the date of its establishment * * *."

Officers of the Naval Reserve ordered to active duty in connection with the Naval Reserve program or ordered to temporary active duty for the purpose of prosecuting special work are specifically excluded from the provisions of the Officer Personnel Act; Naval Reserve officers on inactive duty and those who, prior to the establishment of the lineal list, were under orders directing their release from active duty, were also excluded.

Officers falling within the provisions of the said Officer Personnel Act were recently issued permanent appointments (pursuant to the act). In many cases, for the purpose of adjusting lineal precedence incident to the transition from the

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temporary to permanent ranks, their dates of permanent appointments antedated their former temporary appointments in the same grades. It was not intended that officers in this category would be given back pay or allowances. In the case of Reserve officers excluded from the provisions of the act, claims may lie for back pay and allowances by virtue of section 312 of the Naval Reserve Act of 1938, as amended, which reads in part as follows:

"SEC. 312. * * * all officers of the Naval Reserve * * * who may be advanced to a higher grade or rank in time of peace or in time of war or national emergency under the provisions of this Act, *shall be allowed the pay and allowances of the higher grade or rank from the dates of rank as stated in their commission, as distinguished from the dates of commission, or dates of acceptance of commission*, and the dates of rank as stated in their commissions shall be conclusive for all purposes * * *." [Italics supplied.]

The Navy Department believes that enactment of the proposed legislation is necessary to forestall possible claims for back pay and allowances which may arise from the issuance of permanent appointments incident to the transition from temporary to permanent grades. It is estimated that such potential claims would total a sum upward of $30,000,000.

The Navy Department recommends enactment of the proposed legislation.

This report has been coordinated among the Departments and boards in the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

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[No. 9]

RELATING TO THE PAY AND ALLOWANCES OF OFFICERS OF THE NAVAL RESERVE PERFORMING ACTIVE DUTY IN THE GRADE OF REAR ADMIRAL (H. R. 2426). MR. VINSON

THE SECRETARY OF THE NAVY,
Washington, January 19, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill relating to the pay and allowances of officers of the Naval Reserve performing active duty in the grade of rear admiral, and for other purposes.

The purpose of the proposed legislation is to remove an inadvertent discrimination now existing between rear admirals of the Naval Reserve and rear admirals of the Regular Navy in the matter of upper-half pay and allowances.

Under section 7 of the Naval Personnel Act of March 3, 1899 (30 Stat. 1005), rear admirals on the active list of the line of the Navy were divided for pay purposes into the upper half and the lower half; those officers embraced in the lower half of the grade numerically were given the pay and allowances authorized for brigadier generals of the Army; and those of the upper half, the pay and allowances of a major general of the Army. That division of rear admirals on the active list was continued in effect by subsequent acts including section 7 of the Pay Readjustment Act of 1942, as amended (37 U. S. C. 107), which section uses in part the following language:

SEC. 7. The annual base pay of a brigadier general * * * or * * * *rear admiral (lower half)* of the Navy * * * shall be $6,600; and the annual base pay of a major general * * * or * * * *rear admiral (upper half)* of the Navy * * * shall be $8,800 * * *. [Italics supplied.]

Section 14 of the Pay Readjustment Act of 1942, as amended, provides in part as follows:

SEC. 14. Officers, warrant officers, and enlisted men of the Reserve forces of any of the services mentioned in the title of this Act, when on active duty in the service of the United States, shall be entitled to receive the same pay and allowances as are authorized for persons of corresponding grade and length of service in the Regular Army, Navy, Marine Corps, Coast Guard, or Public Health Service.

Section 2 of the act of June 30, 1942 (56 Stat. 464, 50 U. S. C. 807), dealt with the advancement of rear admirals to the upper half of that grade and provided in part as follows:

SEC. 2. The number of rear admirals on the active list of the line entitled to the pay and allowances provided by law for rear admirals of the upper half, exclusive of those carried as additional numbers in such grade, shall be one-half of the number of permanent and temporary officers of the line in that grade * * *.

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At the request of the Navy Department, the Comptroller General of the United States considered the question of upper-half pay for rear admirals of the Naval Reserve. His decision of September 10, 1946 (B–57583), held that section 2 of the above-mentioned act of June 30, 1942, referred to rear admirals on the active list of the line of the Navy and that the term "active list," with reference to the Navy, generally was used to denote officers of the Regular Navy as distinguished from officers of the Naval Reserve and officers on the retired list. It was further held, that while an officer of the Naval Reserve appointed to the grade or rank of rear admiral is entitled, when on active duty, to the same pay and allowances authorized for officers of corresponding grade and length of service in the Regular Navy (pursuant to sec. 14 of the Pay Readjustment Act of 1942), the matter of determining whether such officer is entitled to receive the pay of the upper half is dependent, not upon his length of service, but rather upon his numerical standing on the list of rear admirals of the line on the active list. The Comptroller determined that Reserve officers promoted to the grade of rear admiral do not thereby become entitled to have their names placed on the list of rear admirals of the line on the active list; hence, such officers are not entitled to receive the pay and allowances of the upper half as such pay is specifically authorized only for officers on the active list of the line of the Navy. The Comptroller General concluded that in the absence of a statute specifically so providing, his office—

would not be justified in viewing the provision in section 14 of the Pay Readjustment Act of 1942, supra, as authorizing credit of active upper half pay to officers promoted * * * to the rank of rear admiral in the Naval Reserve.

The proposed bill is designed to remove the unjust discrimination against Reserve rear admirals whose names are not on either of the lineal lists established under title III of the Officer Personnel Act of 1947. Reserve rear admirals whose names are placed on a lineal list will be entitled to receive upper-half pay, when appropriate, pursuant to the provisions of the Officer Personnel Act (secs. 311 (d) (14) and 315). The proposed legislation is not retroactive.

The Navy Department has been designated by the Office of the Secretary of Defense to sponsor this measure on behalf of the National Military Establishment, and accordingly recommends its enactment.

This report has been coordinated within the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

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[No. 10]

AUTHORIZING THE DISPOSITION OF CERTAIN LOST, ABANDONED, OR UNCLAIMED PERSONAL PROPERTY COMING INTO THE POSSESSION OF THE TREASURY DEPARTMENT, THE DEPARTMENT OF THE ARMY, THE DEPARTMENT OF THE NAVY, OR THE DEPARTMENT OF THE AIR FORCE (H. R. 2434). MR. VINSON

THE SECRETARY OF DEFENSE,
Washington, January 19, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Secretary of the Army recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To authorize the disposition of certain lost, abandoned, or unclaimed personal property coming into the possession of the Treasury Department, the Department of the Army, the Department of the Navy, or the Department of the Air Force, and for other purposes."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Army.

Sincerely yours,

JAMES FORRESTAL.

DEPARTMENT OF THE ARMY,
Washington, D. C., January 13, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith draft of a bill to authorize the disposition of certain lost, abandoned, or unclaimed personal property coming into the possession of the Treasury Department, the Department of the Army, the Department of the Navy, or the Department of the Air Force, and for other purposes, which the Department of the Army recommends be enacted into law. The Secretary of Defense has assigned responsibility for the preparation and submission of this measure, on behalf of the National Military Establishment, to this Department.

The purpose of the proposed bill is to provide authority for the disposition of baggage and similar articles of personal effects shipped on Government bills of lading, after an unsuccessful effort has been made to determine the owner thereof. If the owner is determined but not located, the property is not to be disposed of until the expiration of 90 days after written notice has been sent to his last known address. The bill further provides that the proceeds of the sale of such property shall be covered into the Treasury as miscellaneous receipts.

Disposition of such articles or effects as provided in the proposed bill will permit a much more advantageous use by the afore-mentioned Departments of storage space in certain of their warehouses and depots. The Department of the Army, therefore, recommends enactment of this legislation.

The proposed legislation, if enacted, would result in no additional cost to the Government.

This report has been coordinated among the Departments and boards in the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has been consulted, and advises that there is no objection to the submission of this proposed legislation for the consideration of the Congress.

Sincerely yours,

KENNETH C. ROYALL,
Secretary of the Army.

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[No. 11]

AUTHORIZING CERTAIN PERSONNEL AND FORMER PERSONNEL OF THE NAVAL ESTABLISHMENT TO ACCEPT CERTAIN GIFTS AND A FOREIGN DECORATION TENDERED BY FOREIGN GOVERNMENTS (H. R. 2476). MR. VINSON

THE SECRETARY OF THE NAVY,
Washington, January 14, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to authorize certain personnel and former personnel of the Naval Establishment to accept certain gifts and a foreign decoration tendered by foreign governments.

The purpose of the proposed legislation is explained in its title.

The acceptance of gifts from foreign states by persons holding an office of trust or profit under the United States is controlled by article *I*, section 9, clause 8, of the Federal Constitution, which reads as follows:

> No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any Present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

The Navy Department has interpreted this clause to mean that enlisted men are officers within the purview of this provision and that personnel having any connection with the Navy, including active, inactive, or retired individuals, are also in this category.

At the present time certain gifts and a decoration from foreign nations to personnel of the Naval Establishment are being withheld pending appropriate legislation.

The gifts include a barometer, gold watches, pieces of plate, and cigarette cases awarded naval personnel at various times since 1935. While the reason for giving three of these presents is unknown, the others are tokens of appreciation, such as those items the Danish government presented to two Naval officers for training Danish personnel at the naval air station, Jacksonville, Fla. The Icelandic Government gave 10 awards for aid to the Icelandic motor vessel *Lagarfoss*, January 10, 1944, when a Navy invasion boat rescued the passengers and crew of that vessel when she was stranded by night off Reykjavik during a severe snowstorm.

Prince Saud of the Saudi Arabian Government has presented gifts to various officers and enlisted men of a naval task force recently in Mediterranean waters. These gifts are in keeping with the precedent created by similar gifts to the navies of other countries.

The foreign decoration, the acceptance of which would be authorized by the proposed legislation, is the King's Medal for Service in the

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Cause of Freedom awarded by the British Government to Dr. Mina S. Rees, now head of the Mathematics Branch of the Office of Naval Research, Navy Department, for her contributions in the field of mathematical research during World War II.

The gifts and the decoration are at present in the custody of the State Department pending congressional approval for their acceptance.

The proposed legislation would further authorize the award of the Cross of Naval Merit by Peru and two awards of the Order of Naval Merit and Diploma by Brazil.

The enactment of this proposed legislation would result in no cost to the Government.

The Navy Department has been designated by the Office of the Secretary of Defense to sponsor this proposal on behalf of the National Military Establishment and accordingly recommends its enactment.

An identical report has been transmitted to the Speaker of the House of Representatives this date.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation.

Sincerely yours,

JOHN L. SULLIVAN.

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[No. 12]

HEARINGS BEFORE THE FULL COMMITTEE ON THE BILL TO AUTHORIZE THE COMPOSITION OF THE ARMY OF THE UNITED STATES AND THE AIR FORCE OF THE UNITED STATES, AND FOR OTHER PURPOSES (H. R. 1437). MR. VINSON

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Thursday, January 27, 1949.

The committee met at 10 o'clock, the Honorable Carl Vinson (chairman), presiding.

The CHAIRMAN. Let the committee come to order.

The purpose of the committee meeting this morning is to consider H. R. 1437.

(H. R. 1437 is as follows:)

[H. R. 1437, 81st Cong., 1st sess.]

A BILL To authorize the composition of the Army of the United States and the Air Force of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. That this Act may be cited as the "Army and Air Force of 1949".

DECLARATION OF POLICY

SEC. 2. In enacting this legislation, it is the intent of Congress to provide an Army of the United States and an Air Force of the United States capable, in conjunction with the other armed services, of preserving the peace, security, and providing for the defense of the United States, its Territories, possessions, and occupied areas wherever located, of supporting the national policies, of implementing the national objectives, and of overcoming any nations responsible for aggressive acts imperiling the peace and security of the United States.

TITLE I—ARMY

AUTHORIZED COMPOSITION

SEC. 101. The United States Army and the supplemental Reserve components of the Army of the United States are authorized to consist of the required number of organizational units, with their necessary supporting elements, including combat, administrative, logistic, transport, training, and other service support, needed to maintain the minimum requirements of the Army for national security: *Provided*, That the authorized strength of the organizational units of the United States Army shall consist of twelve Regular Army divisions and five separate Regular Army combat teams and supporting combat and service units supplemented by such forces of the Reserve components of the Army of the United States as may be required to accomplish the mission of the Army, including twenty-seven divisions and twenty-one regimental combat teams of the National Guard and twenty-five divisions of the Organized Reserve Corps, and supporting combat and service units.

AUTHORIZED PERSONNEL STRENGTH

SEC. 102. Within the active-duty strength of the Army of the United States of eight hundred thirty-seven thousand officers, warrant officers, and enlisted persons, established by Public Law 759, Eightieth Congress, there are authorized

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eighty-two thousand three hundred officers, nine thousand warrant officers, seven thousand five hundred female medical officers and seven hundred thirty-eight thousand two hundred enlisted persons. Section 501 of the Act approved August 7, 1947 (Public Law 381, Eightieth Congress), is hereby amended by striking out the words "fifty-one thousand" and inserting in lieu thereof the words "forty thousand"; and hereafter the active list commissioned officer strengths authorized in said section shall apply to the Regular Army, exclusive of the United States Air Force. The numbers herein authorized shall not include such one-year volunteers for training as the Congress may authorize, officers required to train such volunteers, officer candidates, nor personnel of the reserve components on active duty for training purposes only.

MATERIALS AND PROCUREMENT AUTHORIZATION

SEC. 103. The Army of the United States is hereby authorized the necessary equipment and facilities, including guided missiles, to fulfill the purposes of this title and to supply annually with modern standard items a minimum of six divisions and their supporting elements; to replace all equipment as it becomes obsolete or unserviceable; and to maintain such reserve of supplies and equipment as are necessary to support approved war plans. The Secretary of the Army is authorized to procure such equipment, spares, spare parts, guided missiles, and facilities necessary for the maintenance and operation of materials to carry out the purpose of this title.

RESEARCH AND DEVELOPMENT AUTHORIZATION

SEC. 104 The Secretary of the Army is hereby authorized to conduct, engage, and participate in research and development programs related to activities of the Army of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs.

TITLE II—AIR FORCE

AUTHORIZED COMPOSITION

SEC. 201. The United States Air Force shall have an authorized strength of seventy Air Force groups and twenty-two separate Air Force squadrons, supplemented by sixty-one Air Force reserve groups, together with necessary supporting and auxiliary units. The Air Force of the United States is authorized to consist of the number of organizational units, with their installations and supporting and auxiliary elements, including tactical, administrative, logistic, air transport, and training, as may be determined by the Secretary of the Air Force consistent with the numbers of personnel and aircraft hereinafter authorized.

AUTHORIZED PERSONNEL STRENGTH

SEC. 202. The Air Force of the United States is hereby authorized an active duty strength of seventy-five thousand and three hundred officers, including warrant officers (of which number thirty-five thousand may be Regular Air Force officers and four thousand and eight hundred may be Regular Air Force warrant officers), and four hundred and twenty-six thousand and seven hundred enlisted persons, which numbers shall be exclusive of such one-year volunteers for training as authorized by the Congress, officer candidates, aviation cadets, and personnel of the reserve components on active duty for training purposes only.

AUTHORIZED AIRCRAFT STRENGTH

SEC. 203. The Air Force of the United States is hereby authorized twenty-four thousand serviceable aircraft to fulfill its requirements for aircraft necessary to carry out the purposes of this Act: *Provided*, That guided missiles shall not be included within the number of aircraft herein authorized.

PROCUREMENT AUTHORIZATION

SEC. 204. The Secretary of the Air Force is authorized to procure (1) five thousand two hundred aircraft annually to provide the number of aircraft authorized by section 203 and to replace such aircraft as he may determine

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to be unserviceable or obsolete, (2) guided missiles, and (3) spares, spare parts, equipment, and facilities necessary for the maintenance and operation of aircraft and guided missiles herein authorized.

RESEARCH AND DEVELOPMENT AUTHORIZATION

SEC. 205. The Secretary of the Air Force is hereby authorized to conduct, engage, and participate in research and development programs related to activities of the Air Force of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs.

REPEAL OF EXISTING LAW

SEC. 206. Section 8 of the Act of July 2, 1926 (44 Stat. 780), as amended by section 1 of the Act of April 3, 1939 (53 Stat. 555), is hereby repealed.

TITLE III—GENERAL PROVISIONS

APPROPRIATION AUTHORIZATION

SEC. 301. There are hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums of money as may be necessary to carry out the purposes of this Act. Except as may otherwise be provided in the appropriation Act concerned, (1) any moneys appropriated to carry out the purposes of section 103 and section 204 of this Act shall remain available for obligation during the fiscal year for which appropriated and the four succeeding fiscal years thereafter, and (2) any moneys appropriated to carry out the purposes of sections 104 and 205 shall remain available until expended.

SAVING PROVISION

SEC. 302. Notwithstanding any other provisions of this Act, the authorizations herein contained shall be subject to the responsibilities, powers, and duties of the Secretary of Defense and the departments and agencies of the National Military Establishment.

SEPARABILITY PROVISION

SEC. 303. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

The CHAIRMAN. Members of the committee, we have with us this morning the distinguished Secretary of the Army, Mr. Royall. He has some engagements that will require him to leave the country sometime tomorrow. Therefore he is very busy getting ready.

He wants to make an opening statement, but the bulk of the detail will have to be furnished to the committee by the officers of the Army. So we will first start off with Mr. Royall and we will see what he has to say.

STATEMENT OF HON. KENNETH C. ROYALL, SECRETARY OF THE ARMY

Secretary ROYALL. Mr. Chairman, I appreciate this opportunity of appearing before the committee in behalf of what we consider to be——

The CHAIRMAN. Just a minute.

If you photographers want to make any pictures of the witness, make them before he starts because we don't want him to be annoyed by pictures as he is testifying. So, if you want to make any pictures of the Secretary, go ahead and make them now. You can't make any more at the time he is testifying. We are willing to accommodate

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you and cooperate with you, but we don't want you to interfere with committee work. [Pictures taken.]

The CHAIRMAN. Now, you photographers must not take any pictures while the witness is testifying because it is annoying to the witness and detracts the committee's attention from what the witness is saying.

Now, Mr. Secretary, the committee will be very grateful if you will give us the reason for the justification of H. R. 1437 and why it should be enacted into law.

Secretary ROYALL. Yes.

As Secretary of the Army it is my duty to recommend to Congress, with the approval of the Secretary of Defense, an authorized strength of the Army of the United States.

I am here today with General Bradley and other members of the Army General Staff to explain the Army provisions of H. R. 1437. General Bradley plans to cover the specific provisions of the bill and key members of the staff are prepared to answer any detailed questions you may have, so that my remarks will be brief and confined generally to the purposes for which the bill has been drafted.

Since the cessation of hostilities in 1945, your committee has devoted a large proportion of your time and effort toward providing current military forces sufficient for the immediate security of our country and for the support of United States policies at home and abroad.

With changing international conditions it has been necesary for the Congress to frequently reevaluate the military position of the United States and to consider what additional military measures, if any, should be adopted.

Our best estimate of the world situation does not indicate that war is imminent. As the members of this committee will recall, I think I said that every time I appeared before them last year, and I have not changed my view. I do not think that war is imminent.

However, we would be, I think, rather blind if we did not realize that it is at least a possibility. And there appears little likelihood that for a number of years to come we will be free of an international situation fraught with danger and subject to marked fluctuations.

Under these circumstances, it is highly desirable, from several standpoints, that we have a more realistic long-range authorization for the Army and for the Air Force.

One advantage, to the Congress itself as well as to the departments, is that it obviates the present duplicating task of having to pass an authorizing bill in addition to an appropriation bill every time there is a revision.

But the more important advantages of this bill are to provide an authorization framework for national security planning and to permit flexibility in this planning—a flexibility which present and prospective world conditions require.

The authorizing legislation in this bill will permit us, within reasonable limits, to readjust strengths and composition of forces and to readjust equipment and other resources to meet the changing needs which are likely to occur.

The proposed bill also establishes a firm basis for military training—current and future planning up to the premobilization stage. This is not a mobilization bill.

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In developing mobilization and premobilization plans it is of utmost importance that we arrive at a balance between forces which must be maintained in full readiness for war. That is, in our planning we have to know what that balance is from a long-range standpoint.

We must plan for forces which can be maintained in partial readiness for war and forces which can be developed from civilian manpower resources if war should break out.

This proposed legislation establishes what you might call the end point of our premobilization curve.

These are the principal reasons for the legislation—the same reasons which induced the Navy to request, and Congress to enact, a Navy long-range personnel authorization bill in April of 1946. As most of you gentlemen know, the Navy has an authorization bill, and the Army and the Air Force do not. The only thing we have is the greatly outmoded National Defense Act in its final form of 1920, which is manifestly not calculated to deal realistically with the present situation.

The Army has so far refrained from submitting a request for a new authorization, first, because of the impending separation of the Air Force. We did not think a complete evaluation could be made until that was done. And, second, because we have been hoping against hope that we could safely settle down, for all the services, to a static and peacetime establishment.

The passage of this proposed legislation is an essential step in the separation of the Air Force from the Army and will also bring both of these services on a statutory parity with the Navy.

I think I could say, without any fear of equivocation from any service, that the figures we suggest are acceptable and favored by the other two departments. And I can say, for the Army, that the Air Force bill which will be presented to you has the full approval of the Army.

The proportions of the three services which this bill would give—that is, for the Air Force and for the Army—are well in line with the figures which this Congress, that is, the last Congress, on the recommendation of this committee fixed for the three services in the Selective Service Act. So your committee has already considered to quite a considerable extent the same figures which are presented here, and upon your initiative they were incorporated in the act last year. I mean the Selective Service Act, which, of course, is temporary legislation.

Finally, may I emphasize the fact that this authorization bill does not in any respect deprive Congress of the right to fix the size of the forces in existence at any particular time by appropriation bills. Within the framework as established in the bill, Congress will appropriate funds for the forces for each particular year in accordance with the situation then existing.

The pattern of events, gentlemen, shows that our military establishment during this period—which has been called the "cold war" period—shows that our Military Establishment must be an adequate one, adequate for each changing situation.

We cannot forecast, unfortunately, the length of this uncertain international period, but I think we will all agree that the sensible course today is to plan by a span of years and not merely from crisis to crisis.

That is the statement I desire to make to the committee.

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I will be delighted to undertake to answer any questions that you care to address to me. I would like the committee to bear in mind, as the chairman has already stated, that we have members of the staff who can give more detailed information, but that certainly does not indicate that you can't ask me the same questions.

I am sorry I cannot stay during the entire hearing, but I am leaving tomorrow and I have a lot of things to take up before I leave. I may be gone for two and a half weeks.

The CHAIRMAN. Thank you, Mr. Secretary. Your statement clearly sets forth the reason and justification for the enactment of this bill.

Are there any questions from any members of the committee to the Secretary?

Mr. BROOKS. I would like to ask him this question, if I may, Mr. Chairman:

Mr. Secretary, are you in a position to state whether or not the provisions of H. R. 1437, insofar as affecting the Department of the Army is concerned, meet with your approval?

Secretary ROYALL. It does. The bill, as you know, has been redrafted and changed in some respects from the printed copy, the original printed copy. One material change is that we have stated the authorization of the Regular Army, the National Guard, and the reserves in numbers, total numbers, rather than in units. The reason for that, I am sure, is apparent.

Even in the memory of some of the younger members of this committee the size of divisions has been almost cut in half. We are considering, and using, today, regimental combat teams. Therefore, the type of unit and the size of the unit must be flexible to meet changing circumstances, and it is better to define the limits in numbers rather than by number of units.

The CHAIRMAN. Any questions from any other members of the committee? Anyone who wants to ask the Secretary a question, have no hesitancy to do so.

Mr. COLE. Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. Mr. Secretary, I would like to have you tell the committee what studies this recommendation is based on.

Secretary ROYALL. Last year, when we were considering the size of the three forces, we made a very detailed study of the requirements of the Army and those, I think, were presented in considerable detail both on the record and off the record to this committee.

Mr. COLE. In connection with what legislation?

Secretary ROYALL. In connection with the selective service legislation. And this committee, I believe, arrived at the conclusion that 837,000 was a proper amount. However, we have restudied these figures to see if there were any changes in conditions that would suggest a medification upward or downward of the 837,000 figure which was presented last year to you, and we are of the opinion that it is still applicable as an upper limit for an authorization bill.

Mr. COLE. Was any expression sought or obtained from the National Security Council with respect to these recommendations?

Secretary ROYALL. The Joint Chiefs of Staff were the ones who dealt with this primarily, on the National Military Establishment level. The National Security Council does not normally get into the

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exact size of a Military Establishment. Their functions more largely deal with the policies to be followed from a military standpoint.

Mr. COLE. Certainly the size of our Military Establishment has a direct relationship to our national security.

Secretary ROYALL. Yes, that is right. We have, of course, two bodies, in which, unless we wanted to have a complete duplication, we must divide the functions somewhat. As I say, the size and composition and equipment of the forces is normally considered first by the departments and then by the Joint Chiefs of Staff. Certainly, the National Security Council, I think, could take hold of that problem if they wanted to, but——

Mr. COLE. At any rate, it has not been presented to the Council and the Council has not acted on it?

Secretary ROYALL. No, it has not. It has been presented to the Secretary of Defense and the Joint Chiefs of Staff.

Mr. COLE. Then I assume, from what you have said in connection with that, that the Joint Chiefs of Staff have considered this problem and this represents their recommendation.

Secretary ROYALL. That is correct, sir.

Now, as to the National Security Council, while it has not been presented to them, I am certain that the figures have been used before that Council in a number of instances in general discussions. So they are certainly advised of it, at least.

Mr. COLE. Well, I quite agree with your statement that it is not wise for the Departments to come constantly to the Congress for reevaluations and restudies. It was my impression, when the Congress fixed the strength of Army, Navy, and Air Force in the Selective Service Act, that that was permanent legislation and it was not tied in with the duration of the authority to draft people.

Secretary ROYALL. I do not believe that technically is the case. I think that expires when the draft law expires.

Mr. COLE. Then either the Department is at fault or, at least, inconsistent in taking the position now that it is not wise to come up every other year to fix the size of our Military Establishment if last year they came up here and ratified what Congress did, but only for a 2-year term.

I do not know—maybe can clear up from our staff as to whether——

Mr. BLANDFORD. The Act expires, as I understand it, Mr. Cole, in 1950; and the Army feels, I believe, that possibly this authority expires with it in 1950 as to the authorized strength.

Mr. COLE. There should not be any room for doubt as to what the law says as to whether the numbers fixed in the draft law as constituting the size of our Military Establishment disagrees with the authority given in that same act to draft people.

Mr. KILDAY. Will the gentleman yield?

Secretary ROYALL. I think that is correct. One of our officers says that there is some possibility for the interpretation which you first suggested—that it may continue.

However, even if that were true, this bill also provides the size of the National Guard, the Organized Reserves, and it specifies, or puts a limit on, the number of Regular Army officers and the other items in here that I think should be enacted.

Mr. COLE. Then this bill——

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Secretary ROYALL. You see, that bill, Congressman Cole, was not primarily designed as an authorization bill. It started as a draft bill, and the figures were put in there primarily for the purpose of determining the limit of people that could be drafted.

But this committee, of its own initiative, conducted a very thorough hearing on the size of the Army. Therefore, those figures were carefully studied.

Mr. COLE. The authorized strength contained in this bill are in complete harmony with the authorized strengths inserted in the selective-service bill, which this committee and the Congress approved after quite considered deliberation.

Senator ROYALL. That is correct, sir.

The CHAIRMAN. Do any other members have any questions?

Mr. KILDAY. Mr. Chairman.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. Of course, you have indicated the Selective Service Act is a negative proposition. It does not authorize anything. It limits what you can go to.

Secretary ROYALL. That is right.

Mr. KILDAY. Now, of course, the National Defense Act provided for 286,000, if I remember correctly; and in our first Selective Service Act, in 1940, we provided not to exceed 900,000 people in training at any one time, and one of the contentions, I think, is that unfortunately we remove the limitation.

Secretary ROYALL. That is right.

Mr. KILDAY. But this is an authorization. It does not mean you are going to have this many. It depends on whether the Appropriations Committee and the Congress give it to you. So it is in accordance with our tradition and our precedent that Congress specifically authorize the number of troops which shall be in the Army.

Secretary ROYALL. That is correct, Mr. Kilday. And I am glad you pointed out a very salient fact: that the limitation in the Selective Service Act was not an affirmative pronouncement in this bill.

Mr. KILDAY. Negative.

Secretary ROYALL. That is right.

Mr. ANDERSON. Mr. Chairman.

The CHAIRMAN. Mr. Anderson.

Mr. ANDERSON. Mr. Secretary, the bill before us (H. R. 1437) provides or authorizes 837,000 officers and men?

Secretary ROYALL. Yes.

Mr. ANDERSON. What is the present composition—officers and men—of the Army?

Secretary ROYALL. The last spot figure I have is that the Army today is about 690,000 officers and men. However, that is what we call a flash estimate. We have a very firm figure of the 31st of December 1948, which I will give you. The total is 673,000, of which 68,400 are male and WAC officers, 4,600 are female medical officers—that is, nurses and specialists—and 5,000 are warrant officers. In other words, of all types of officers, there are 73,000.

Mr. ANDERSON. Well, Mr. Secretary, when we passed the Selective Service Act of 1948, what was it contemplated that this full strength of 837,000 would be in the Army?

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Secretary ROYALL. Well, it is difficult to answer that too dogmatically. When we put the figure in, we hoped that they would be authorized as of June 30 of this year.

Mr. ANDERSON. 1949?

Secretary ROYALL. 1949.

Now, thereafter 110,000 1-year trainees were injected into the bill, which would have made 947,000. But, because we thought we could get some use out of those trainees, we reduced the gross figure to 900,000.

Now, we have gotten only 17,000 of the 1-year trainees. Of course, they are not, from a long-range standpoint, of great value to the Army as a going concern. They get the training, and it is a good training program, but not as far as building up the Army is concerned. So we go back now to the original 837,000 instead of the 900,000 which was put in the draft bill.

Mr. ANDERSON. How long has it been, Mr. Secretary——

Secretary ROYALL. I mean the appropriation bill.

Mr. ANDERSON. Since you inducted any men in the Army under the terms of the Selective Service Act of 1948?

Secretary ROYALL. We inducted last month.

Mr. ANDERSON. In December?

Secretary ROYALL. Yes.

Mr. ANDERSON. Now, inductions are canceled for January and February?

Secretary ROYALL. And March.

General BRADLEY. Not for January.

Secretary ROYALL. Not for January. Those were already called.

Mr. ANDERSON. Those were already called?

Secretary ROYALL. Yes. For February and March.

Now, as to the reasons, first, the bill said that we should not draft unless we needed them. The reason we are pretty certain we will not need them was that our reenlistments were growing so rapidly.

Now, our enlistments were affected favorably by the draft law. They went up immediately after the draft law was passed. The incentive to enlist was increased. We built up our Army rapidly. We were running up to some 30,000 a month in some months. Now, we knew to stop the drafting of those men would cause enlistments to fall off; and, but for the fact that we were getting so many reenlistments, we probably could not have entirely stopped the draft even for 2 months. But we got 16,000 reenlistments in the month of December, and it looks as if we will get 17,000 this month.

With that fact in mind, we were quite certain we could maintain our strength without the draft. We think the draft law is absolutely necessary to keep on the books, and we are going to ask that that be done. But we do not believe that for the immediate future we are going to have to use it.

Mr. Chairman, may I digress to boast a little about the Army?

The CHAIRMAN. Go right ahead.

Secretary ROYALL. I really believe that the 18,000-a-month reenlistment is the greatest compliment that the United States Army has ever received. There has never been anything approaching it in peacetime conditions.

Mr. COLE. How do you account for it?

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Secretary ROYALL. Because we got satisfied soldiers.

Mr. COLE. Well, might it not also have been that those boys could not get a job someplace else; so they decided to stay on?

Secretary ROYALL. Unemployment has not reached a great scale now. Of course, it is increasing; but, even before there was the extent of unemployment that there is today, and when you find 50 percent of your men wanting to stay in the Army, I believe that is a better compliment than any other sort of statistics can give you.

Mr. COLE. Well, I am happy to hear you say that because, as I read in the newspapers of the suspension of the draft by the Army followed by a discouragement of enlistments by the Army, to me it indicated the possibility that that may have been due to increased unemployment. I am glad to have your reactions that in your opinion it was not caused by unemployment but rather that service in the military branch of our Government is now sufficiently attractive to induce men to make it a career and stay on. I hope that continues to be the experience of the services. It is very encouraging.

Secretary ROYALL. Seven thousand in May, 8,000 in June, 10,000 in July, 11,000 in August, 12,500 in September, 14,000 in October, 17,700 in November, and 17,900 in December, and 8,248 for the first 14 days of this month; and, if that rate is maintained, it will run a little over 18,000.

Now, it probably will not be quite maintained, because the first week of the month is usually a big enlistment week.

The CHAIRMAN. Any other questions?

Mr. BATES. Mr. Chairman.

The CHAIRMAN. Mr. Bates.

Mr. BATES. Mr. Secretary, what you say about reenlistments is true, because that is the news that we received from the oversea commanders a few weeks ago when they stated very clearly that they were amazed and pleasantly surprised at the large number of reenlistments, constituting over 50 percent of the men who were serving in the occupied areas. That was not, in their opinion, or mine or the committee's, due to any unemployment situation but to a high degree of patriotism on the part of the soldiers who realized that we might have a job to do, and might perhaps have a tougher job to do in the future, and they did not feel they were going to walk out on their buddies who were over there.

That was perhaps one of the great motivating factors for their staying on the job, in my opinion.

Now, Mr. Secretary, a question as to this 837,000 being the authorized strength under the so-called selective-service law. Are you retaining that full authorized strength today?

Secretary ROYALL. No, sir. We are setting our strength at 677,000 due to the budget figures.

Mr. BATES. That is what I was coming to.

Secretary ROYALL (continuing). That have been proposed.

Mr. BATES. In other words, you are not maintaining the strength of the Army as set forth in the selective-service law because of budget limitations submitted recently to Congress. That is the real reason you are not drafting these men?

Secretary ROYALL. Yes, sir. If we had to go up to 837,000, we would certainly have to draft for some months more; that is right.

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Mr. BATES. So that is the real reason for stopping the draft, inasmuch as you are not up to the authorized strength set forth in the Selective Service Act. But you are not drafting only because you haven't the money in the budget to take care of that additional number?

Secretary ROYALL. I wouldn't think you could say "only because." Even with 677,000, unless our enlistments had greatly increased and our reenlistments had greatly increased, we would still have to draft even for the 677,000.

Mr. BATES. But if you had today an amount of money sufficient in the budget recently submitted to Congress to take care of the authorized strength set forth in the selective-service law, you would start drafting men today; would you not?

Secretary ROYALL. If either that condition existed, we would have to draft them; or, if our enlistments had not come up to the present standards, we would have to draft them. With either of the two, we would have to draft them.

Mr. BATES. One further question. Do you think the present strength of the Army is all you need for what you might call the emergency needs of today?

Secretary ROYALL. Well, of course, we think that 837,000 is the size army that the present-day conditions require. But we also understand that there must be given weight to other considerations, among them an important consideration being the soundness of our national economy and the solvency of our Nation.

Mr. BATES. Then, you think the limitations set forth in the budget are about as far as we can go?

Secretary ROYALL. That would be my judgment.

The CHAIRMAN. Any questions from any of our distinguished new members?

Mr. COLE. Mr. Chairman——

Mr. JOHNSON. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. Mr. Royall, why is there a need for this section 103 regarding matériel? Does not the Army have enough flexibility under existing laws to buy what is needed and is modern and up to date?

Secretary ROYALL. Well, it may be—you are talking about section 103?

Mr. JOHNSON. Yes.

Secretary ROYALL. It may be that that is not absolutely necessary, but that provision or one similar to it is in the Navy bill, as I understand it, and I think it is an appropriate provision which indicates the opinion of Congress and the action of Congress in favor of adequate equipment for this Army.

The CHAIRMAN. May I inquire, Mr. Johnson, if you have in mind anything particular with reference to the authorization for guided missiles?

Mr. JOHNSON. No.

The CHAIRMAN. The reason I am happy to see that in there is because under a strict interpretation by the Comptroller that might cause embarrassment. I do not want any embarrassment that the money appropriated cannot be used for guided missiles. It might be also subject to a point of order on the floor because there is no specific

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authorization anywhere, either in the Navy legislation or in the Army, or Air Force, for guided missiles.

Now, guided missiles have a definite meaning and for that reason it is, I think, very important that it be spelled out in the bill.

Mr. JOHNSON. I think that clause is necessary. But as to these other ones, about the supply of modern, standard items of equipment, I though the Army had traditionally the right to keep changing their weapons to keep current.

The CHAIRMAN. Well, they probably have, but it will not hurt to put it in there to spur them up.

Mr. JOHNSON. I want to ask one more question if I may, Mr. Chairman.

In your statement on page 2 you say that if authorization is granted it will bring the Army up on a parity with the Navy. Just what do you mean by that?

Secretary ROYALL. What I mean is that the Navy has an authorization bill and we do not have one.

Mr. JOHNSON. You are not referring to the numbers?

Secretary ROYALL. No; I was not in that sentence referring to the numbers. I did say, however, in response to inquiries, that the numbers of the three services had been discussed between them and I thought that they were all in order.

Mr. JOHNSON. You mean, then, that it would be on a legislative parity with the Navy?

Secretary ROYALL. That is right.

Mr. JOHNSON. That is all.

Mr. KILDAY. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. Mr. Secretary, this bill would give the Army, exclusive of the Air Force, 40,000 officers as compared with the present authorization of 51,000 for the Army and Air Force.

If the bill is passed, is it your intention to immediately commission the balance of them, or what is your program?

Secretary ROYALL. No; it is not. It is our thought that with an Army of 837,000, which is the authorization we ask, if we should reach that figure it would require around 80,000 officers in round numbers.

We think about half of them should be Regular officers and the others should be reserves or others called to temporary duty because that would give us more flexibility.

We also feel that 40,000 officers, if we went up to the limit of that number, would merely provide officers for an army of approximately 400,000 and that in present circumstances it is unlikely in any reasonable period we will get down below that.

However, we are not going to rush to fill those vacancies at this time. We will do it on a phased program.

Mr. KILDAY. Of course, that is the basis of 10 percent officers?

Secretary ROYALL. Approximately.

Mr. KILDAY. Which has been traditionally true of ground forces. The Air Forces run higher, but 10 percent is regarded as the proper proportion of officers, is it not?

Secretary ROYALL. That is approximately correct; yes, sir. Of course, you realize that with specialties coming in in all services that that proportion may gradually vary, but it has not so far varied very much for the ground forces.

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Mr. COLE. Mr. Chairman, I dislike to prolong the discussion or the argument or belabor the point but for the sake of information and for the purpose of keeping the record straight I think it should be pointed out that this authorization is not necessary in order to establish this strength of the Army.

Section 2 of the Selective Service Act says that the—

authorized active duty personnel strength of the armed forces—

exclusive of certain ones—

is hereby established as follows: (1) of the Army of the United States, 837,000 plus 110,000 1-year enlistees; (2) of the Navy, including the Marine Corps, the present authorized statutory strength of 666,882 plus 36,000 1-year enlistees; and (3) of the Air Force of the United States, 502,000 plus 15,000 1-year enlistees.

Now, section 17 of that act, paragraph (b), says:

All of the provisions of this title except the provisions of section 2—

and others—

shall become inoperative on a certain date.

So a fair construction of that act would indicate that it is not a negative approach to the question of the authorized strength of the armed services.

It is a positive one, one which was enacted by the Congress and one which is permanent unless and until the Selective Service Act is repealed by the Congress.

Now, if the act expires by its present terms the authorized strength of the Army is fixed by a statute?

Secretary ROYALL. I do not——

Mr. COLE. I see no harm in reenacting it, but I do think for the purposes of the record it should be indicated——

Secretary ROYALL. Apparently there is a question on that point and as I say, one of our officers takes that same view. The limits were put in there, of course, for the purpose of fixing the size of the Army to be covered by the draft.

That was the primary purpose.

Mr. COLE. There is one other question. You said that the Department of the Army was going to urge that we keep the draft law on the books. Does that mean that you are going to urge an extension of it or that you are going to resist any repeal of it, or both?

Secretary ROYALL. I think we should have an extension of those parts which would expire because I believe that the presence of it is a helpful thing and if we shonuld reach the stage where any of the departments could not recruit up to the required number it will be necessary to resort to it.

Mr. COLE. Does that contemplate that your recommendation would be that the law be permanent?

Secretary ROYALL. Well, permanent in the sense that we think it ought to have no expiration date. Of course, if conditions change sufficiently in the world it might be wise to repeal it, but we do not see anything on the horizon that looks like that much sunshine.

The CHAIRMAN. Any further questions? If not, thank you, Mr. Secretary——

Mr. ELSTON. Mr. Chairman, I have a question I would like to ask.

The CHAIRMAN. Mr. Elston, the gentleman from Ohio.

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Mr. ELSTON. Mr. Secretary, I would like to ask you a little bit more about the authorization of the Budget Bureau. You say that it was authorizing 677,000. I would like to know whether or not that was in accordance with the recommendation to the Budget Bureau or whether or not you recommended the full 837,000 and you were stopped at the Budget Bureau?

Secretary ROYALL. Well, that is a rather complicated question to answer. We started out wanting 837,000. When the question of how much could reasonably be spent for national defense was fixed at around $15,000,000,000, then the three services restudied the matter in the Joint Chiefs of Staff.

And assuming that that limit was a necessary and proper one, which is the opinion of the National Military Establishment as well as the President, when that appeared, then we ourselves fixed the 677,000 as the maximum that we could provide for the Army and similar figures were fixed for the others.

Mr. ELSTON. Well, then, you feel that 677,000 is all that you will need for the present?

Secretary ROYALL. It is all that we will need if the $15,000,000,000 limitation is correct, and I think it is correct.

Mr. ELSTON. Well, I mean from the standpoint of national defense and security you feel that 677,000 is all you need.

Secretary ROYALL. If we disregarded every other consideration, national consideration, except national defense, I would want the 837,000, but I do not think we can disregard other matters of importance to the country, and I do not think the Department of the Army or the National Military Establishment can entirely overlook the fact that they are only parts of a Government that has many functions to perform.

The CHAIRMAN. Mr. Secretary, I would like to ask you to explain and give us your interpretation of section 301, the saving provision.

I want to see what is in your mind and see if it is the same thought that is running through my mind.

Secretary ROYALL. Section what?

The CHAIRMAN. The saving provision on page 7:

> Notwithstanding any other provision of this Act, the authorization herein contained shall be subject to the responsibilities, powers, and duties of the Secretary of Defense and the departments and agencies of the National Military Establishment.

Now, what was in mind when that was put in the bill?

Secretary ROYALL. As far as I know, nothing was specifically in mind except a reiteration of the fact that within the authorizations the Secretary of Defense must exercise his judgment as to the proportion between the three departments.

That is the situation that confronts us today with the budget limitation. The Secretary of Defense, advised by the Joint Chiefs of Staff, would have the duty of reaching a decision as to how the number of men that could be obtained for the $15,000,000,000 was divided between the three departments.

Mr. KILDAY. That is a most remarkable provision to have in a law, Mr. Secretary:

> Notwithstanding other provisions of this Act, the authorizations herein contained shall be subject to the responsibilities, powers, and duties of the Secretary of Defense.

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The CHAIRMAN. Now, in that connection, Mr. Kilday, are not the powers and duties of the Secretary of Defense set out in the National Security Act and does that not positively state what his responsibilities are?

Now, would this confer upon the Secretary any veto power or anything beyond that which is set out in the National Security Act?

Secretary ROYALL. You are asking me? I think it would mean the responsibilities, powers, and duties which are now or from time to time set out in that act as amended.

I do not see any great harm about it. As a matter of fact, it may well be necessary to recognize that there is no independent right in any of the departments which he cannot adjust between them.

The CHAIRMAN. Yes, but the powers of the Secretary of Defense are only delegated and the only powers he has are specifically enumerated in the National Security Act.

Now, what is worrying me: Does this confer upon him any more powers than that which have been specifically designated in that act?

Secretary ROYALL. I do not think it does. I think it merely assures us that this particular legislation does not diminish those powers.

The CHAIRMAN. All right.

Thank you very much.

Now, Mr. Secretary, the press photographers would like to take a picture of you as you leave.

(Picture taken.)

The CHAIRMAN. Thank you, Mr. Secretary. The committee wishes you a pleasant journey and looks forward to seeing you back soon.

Secretary ROYALL. Thank you, gentlemen.

The CHAIRMAN. Now, members of the committee, may I suggest to all the members that they speak a little louder because the acoustics are not so good and the members back here cannot hear.

Now, members of the committee, I am honored and privileged to present to you one of the great soldiers of the Nation, Gen. Omar Bradley.

General, the committee would be delighted to have you make any observations, uninterrupted, with reference to the reason and justification for this bill being enacted into law.

STATEMENT OF GEN. OMAR N. BRADLEY, CHIEF OF STAFF, UNITED STATES ARMY

General BRADLEY. Mr. Chairman, with your permission, I will read a prepared statement and then try to answer any questions which you may have.

The CHAIRMAN. That is all right.

Let there be order in the committee room.

All right, now, General.

General BRADLEY. If the Army is to engage in sound long-range security planning, then it must be provided a comprehensive military policy, adequately defined and legally authorized by the United States Congress.

Today the Army is operating under the scattered authority of several antedated acts, stretching back to the First World War. These include the National Defense Act of 1916 with its substantial amendments of 1920, the emergency war powers granted the President in

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1941 and 1942, and finally the strength authorization contained in the Selective Service Act of 1948.

H. R. 1437 would correlate in a single act of Congress the necessary authorizations in personnel, procurement, funds and authority to enable both the Army and the Air Force to program their needs and devise their plans within the limits clearly marked for them by statute.

This act would make possible an instant response to danger by providing both services with a cushion for prompt emergency expansion. It would eliminate the immediate need for enabling legislation to bring the Army and Air Force up to a state of war readiness. It would permit Congress to arm the Nation in an emergency and speed war mobilization simply by the appropriation of funds. It would not imperil or lesson control by Congress of our armed forces but it would materially shorten that time lag between our recognition of danger and preparedness for it.

I would like to depart from this statement for just a moment to recall how in 1939 and 1940 when we saw an emergency approaching, the authorized strength of the Army, as some members brought out, was about 280,000.

The actual strength by appropriations at that time was something around 200,000. The Congress authorized increases up to the 280,000 figure by appropriation acts only, and it was not necessary to take the time to pass additional authorization acts until they passed the 280,000 figure.

So the fact that 280,000 was authorized was a great help to the Congress and to the Military Establishment in increasing the Army up to that figure to help prepare for the emergency which everyone saw coming.

The Army's up-to-date manpower program for war readiness was presented during the second session of the Eightieth Congress when we asked an increase in authorized personnel to provide, among other benefits, a mobile striking force as part of our strategic reserve in the United States.

Because the bulk of our forces were already committed in occupational duties and in the maintenance of an establishment upon which we could rapidly expand in the event of danger, we recommended this enlarged authorization to permit us to construct a combat force capable of instant deployment.

This program was approved by Congress and incorporated into provisions of the Selective Service Act of 1948. It provided a foundation upon which the Army can rapidly create combat capabilities for minimum emergency missions.

It will enable the Army to undertake missions in support of the Air Force and to establish those critical footholds essential in carrying a strategic offensive to the enemy's land.

The size of this authorization was fixed by an estimate of the manpower required in minimum missions the Army might be called upon to perform. It was limited by the need to contain our peacetime military forces within the capacity of our economy to support them.

The Department of the Army recently sent to your chairman a copy of H. R. 1437 containing those revisions that we recommended be applied to our Service. These changes reflect suggestions from your committee as well as recommendations from our staff. Both of them

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are designed to produce the greater flexibility which I am sure you will agree is essential in any long-term military authorization such as this.

Although I dislike as much as you do the need for reading this prepared statement, I shall review these recommended Army changes, section by section. Other key staff officers of the Army are here with me and they will go into the pertinent details. I shall be glad to answer any question I can for you, and refer any that I cannot to my staff.

Section 101 provides an authorized composition for the Army of the United States. Its phrasing is patterned after that of the National Defense Act of 1916, as amended in 1920.

Because this wording has already survived the test of two world wars, we have retained its same broad and general provisions. Rather than ask an authorization for specific units, we have elsewhere in the bill recommended an authorization in personnel strength. Units are subject to change within personnel limitations. If the Army is permitted elasticity in the designation and maintenance of units, it is better able to adjust its structure to the contingencies with which it may be faced.

The CHAIRMAN. One minute, General, please. As you are taking up the bill section by section we can consider it by sections. Let me ask: Now, are there any amendments that the department is proposing to section 101?

General BRADLEY. Yes, sir.

The CHAIRMAN. Will you give the committee the benefit of the amendment that you are proposing to section 101 right in this connection? Has the staff copies of it?

Mr. BLANDFORD. Yes, sir. All the members have them also, Mr. Chairman.

General BRADLEY. The main thing the revised section 101 does is to cut out the specified units so that in future years as time and conditions change, the Military Establishment would not be bound to a certain number of units.

Shall I read section 101——

The CHAIRMAN. Wait 1 minute, General, please, sir.

Now, in the original bill, section 101 authorized 12 Regular Army divisions, five separate Regular Army combat teams, and some 52 divisions in the Reserve; is that correct?

General BRADLEY. That is correct.

The CHAIRMAN. Now, you propose to eliminate all that?

General BRADLEY. Eliminate the numbers of units and type of units.

The CHAIRMAN. That is right.

All right. And you substitute in this proposal "The Organized Peace Establishment of the Army of the United States," and so forth.

All right.

Now go to section 102. Has every member a copy of this proposed amendment now?

All right. Go ahead.

Mr. COLE. Let me ask, Mr. Chairman, before you leave the subject. Is that proviso in the printed bill which you now seek to have stricken out a carry-over from the Defense Act of which you say this section was patterned after?

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General BRADLEY. The way it is printed, that is carried over from the Selective Service Act of last year. We did specify the units in that, I believe.

Mr. COLE. I understood you——

General BRADLEY. Maybe we did not specify in the act, but we defined it on those units. That is the way we originally arrived at the 837,000. It was based on those major units and the supporting units thereto, plus the service which we furnished to the Air Force.

The CHAIRMAN. Now, if any members want to ask any questions in regard to the proposed amendment offered by the department to section 101, which is to strike out what is in the bill and substitute what is in the printed memorandum——

Mr. JOHNSON. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Mr. JOHNSON. As I read that, all you do there, General, is just lay down the broad category of the Regular Army, the National Guard and the Organized Reserves?

General BRADLEY. Yes. And in the next section we get to specific numbers.

Mr. JOHNSON. Yes. Later you specified the units.

General BRADLEY. Numbers, not units.

Mr. JOHNSON. Yes, numbers. This just lays down the same classification we have had before?

General BRADLEY. Yes, sir.

Mr. JOHNSON. For years?

General BRADLEY. That is correct.

The CHAIRMAN. Without objection, the amendment offered to section 101 is agreed to.

Now, go ahead to your next section, which is 102.

General BRADLEY. Today the Army is operating under an active-duty authorization of 837,000 men. This ceiling was established by provisions of the Selective Service Act of 1948. To command this Army, we are authorized a regular officer strength of 30,600 men and women. We have additional Reserve officers serving on extended active duty.

This level of Regular officers was established by the Officer Personnel Act of 1947 and by administrative agreement thereafter between the Army and the Air Force. The regular warrant-officer ceiling was fixed at 1 percent of regular enlisted strength by an act approved by Congress in 1941.

In section 102, we confirm the desirability of authorizing a personnel strength of 837,000 for the Regular Army. While it is unlikely that we can safely support so huge a force in a peacetime economy, this authorization will provide a comfortable cushion for expansion in the face of precipitant danger.

The estimate is a minimum one, determined only after thorough evaluation of the responsibilities heaped upon the Army as a result of our Government's world commitments; and only after conservative study of our requirements in defense of the United States. Even this authorized strength of 837,000 would not produce an Army capable of anything more than minimum emergency one-shot missions.

It represents a compromise between desirable requirements for defense and what we could safely afford short of mobilization for war.

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Obviously Congress cannot—and indeed will not—appropriate from year to year sufficient funds for the maintenance of this authorized force.

For the fiscal year 1950, the Army is recommending a force substantially below that authorization. We readily recognize that there is a reasonable limit to what a nation can safely spend for security without imperiling its economic survival. And it is perfectly apparent that changes in world conditions from year to year, changes in the economic and military health of our allies will justify fluctuations in the actual strength of the Army. But as long as we maintain a safe and comfortable margin for expansion in the event of emergency, Congress can—by its power of appropriation—readily and instantly improve the state of our defenses.

Because this ceiling of 837,000 men was calculated on the basis of joint capabilities of the several services, it may be desirable to point out that the Army's capabilities with such a force would complement those of a 70-group Air Force in our joint security plan. Only with such a force could we hope to provide ground support for a 70-group air force and still undertake those primary defense missions which would devolve upon the Army in the event of war.

Again I would like to depart from this prepared statement. I am not implying in any way that this statement means that is just our part of an over-all force. This force of 837,000 was arrived at after carefully studying war plans which involved the use of the 70-group air force and the service support which we must give.

You may even remember that last year when I first appeared before your committee, we recommended 820,000 because at that time we did not know the Air Force was recommending an increase. When they did, we had to add 17,000 to that for additional service troops to help them. So this is based on our part of working with 70 groups in actual war plans and the service support which we must furnish them.

In recommending this 837,000 figure, we have not attempted to break it down into separate categories of personnel. To have done so might have bound us to an inflexible structure, inconsistent with our changing needs. The ratio of officers to enlisted men is not the result of a mathematical formula.

Rather it is a variable, fixed by the missions assigned to the Army. If we are relieved of a share of our responsibilities in military government in Germany, Austria and Japan our requirement for officers will be reduced. On the other hand, if we are to put added emphasis on the training of our reserves, those officer requirements might be increased.

Each year this ratio between officers and enlisted men is reviewed carefully both by the Bureau of the Budget and by the Appropriations Committee of Congress. Again, in the appropriation of funds, Congress exercises complete control. We recommend this procedure as a preferable and sound basis of establishing year-to-year strength both in officers and enlisted men. There are too many variables at work to make an arbitrary ratio a practical one.

In contrast to the existing authorization for 30,600 regular officers, we have recommended an authorized strength of 40,000 commissioned officers for the Regular Army. This would provide only one-half of

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the estimated strength required to officer an authorized 837,000-man Army.

Our present authorization was established in section 501 of Public Law 381, enacted by the Eightieth Congress in August 1947, prior to the separation of the Air Force from the Army. This act provided an authorized officer strength of 51,000 for both the Air Corps and the Army.

It was a trial-and-error estimate; the figure was not geared to any over-all authorization in strength for the services and it was not based upon experience factors. Since separation of the services, we have studied the problem in detail and we recommend this revised authorization to provide a balance in the upward revision of authorized enlisted strength.

Rather than pin warrant-officer authorization to 1 percent of enlisted strength, we have estimated requirements on the basis of an Army-wide job analysis. In recommending an authorization for 9,000 Regular wrarant officers, we have counted the number of specialist jobs. Not only can warrant officers be qualified by training and experience to take on these specialist jobs, but in so doing they will help to release officers for general-duty assignments.

In estimating an authorized strength for Reserve components we had first to determine what our mobilization requirements shall be. Mobilization demands full utilization of the vast manpower resources of both the National Guard and the Organized Reserve.

The ability of the Army to take to the field in a sustained strategic offensive is heavily dependent upon hasty deployment of a ready and well-trained National Guard. At the same time, we must maintain in varying degrees of readiness a strong Organized Reserve, so organized and formed that its complete mobilization can be accomplished swiftly and in orderly fashion. The Organized Reserve is the reservoir of decisive officer strength.

In this bill we have recommended a total personnel authorization of 750,000 for the National Guard and 980,000 for the Organized Reserve Corps.

The National Guard strength represents the maximum rather than the reasonable number that the States could be expected to support. The authorized strength of 980,000 for the Organized Reserve represents the trained Reserve in manpower required to meet mobilization requirements.

At this present time it is impractical to assume—or to even envision—that the National Guard and Organized Reserve Corps can attain these strengths without UMT or some such similar legislation. But in recommending legislative authorizations for long-term needs and for indeterminate conditions we feel it is wiser to list requirements rather than to limit ourselves to present availabilities.

To strengthen our warrant officer program, we have recommended an authorization for warrant officers in the Organized Reserve Corps. This would give the Reserve parity with the National Guard and the Regular Army.

The CHAIRMAN. Now, gentlemen, do you have any amendment now to section 102? And I will ask the clerk to read that amendment—that is, I will ask the staff to read it. Mr. Blandford, read it.

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Mr. BLANDFORD. The amendment to section 102 would be as follows: In lieu of the present section 102, substitute the following:

There is hereby authorized for the Army of the United States an active duty personnel strength of 837,000 officers, warrant officers and enlisted persons, exclusive of such 1-year enlisted volunteers for training as are authorized by Congress, officer candidates, personnel of the reserve components on active duty for training purposes only, persons paid under the appropriations for the National Guard and Organized Reserve Corps, and personnel and units of the reserve components ordered to active duty in an emergency hereafter declared.

The CHAIRMAN. The Department is suggesting that in lieu of what is in the original bill?

Mr. BLANDFORD. No, sir. That is just a part of it. There are several sections.

The CHAIRMAN. (b) Oh, yes.

Mr. BLANDFORD (reading):

(b) Of the active duty personnel strength authorized in subsection (a), not to exceed 40,000 may be active list commissioned officers of the Regular Army exclusive of the numbers authorized by law for the Army Nurse Corps and the Women's Medical Specialist Corps; and 9,000 may be active list warrant officers of the Regular Army. Section 501 of the Officer Personnel Act of 1947 (61 Stat. 883) is hereby amended by striking out the words "fifty-one thousand" and inserting in lieu thereof the words "forty thousand"; and hereafter the active list commissioned officer strength authorized in said section shall apply to the Regular Army, exclusive of the United States Air Force.

(c) There is hereby authorized for the National Guard of the United States a personnel strength, to be distributed among the several States, Territories, and the District of Columbia as the President may from time to time direct, of 750,000 officers, warrant officers and enlisted persons, excluding those serving on active duty in the Army of the United States that are counted within the personnel strength of 837,000 authorized in subsection (a) of this section.

(d) There is hereby authorized for the Organized Reserve Corps a personnel strength of 980,000 officers, warrant officers, and enlisted persons excluding those serving on active duty in the Army of the United States that are counted within the personnel strength of 837,000 authorized in subsection (a) of this section. Persons may be appointed as warrant officers in the Officers Reserve Corps under such regulations and in such numbers as the Secretary of the Army may prescribe.

The CHAIRMAN. I think, General, that is a great improvement over the section as originally introduced.

Now, that means, and everyone can understand, that the limit is 837,000 for the Regular Army, the National Guard, 750,000 and 980,000 for the Organized Reserve, making a total of 2,567,000. That is the pattern, is it not?

And of that number, the Regular officer strength will not exceed in the Regular Army more than 40,000; is that correct?

General BRADLEY. Yes, sir.

The CHAIRMAN. Thank you very much, General.

Any questions on this section now? This is the heart of the bill.

Mr. HAVENNER. Mr. Chairman, are we going to proceed to act today on this authorization.

The CHAIRMAN. We are going to proceed to go along in an orderly way and cross every bridge when we come to it.

We are not going to vote the bill now.

Mr. HAVENNER. We are to act on this bill for authorization of the National Guard and Reserves without hearing any representatives——

The CHAIRMAN. We will probably hear from anybody——

Mr. HAVENNER. I mean, are we going to act on this today and authorize it without hearing from them?

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The CHAIRMAN. I do not know of anyone objecting to a National Guard or Organized Reserve, as large as this.

Mr. HAVENNER. We want to hear from them.

The CHAIRMAN. Well, I am not hunting up witnesses.

Mr. HAVENNER. Mr. Chairman, we had an awful lot of criticism before this committee last year from the representatives of the National Guard and the Organized Reserve and I think if we are to proceed in an orderly and careful manner in legislating here we ought to hear from them.

The CHAIRMAN. Well, Mr. Havenner, we will be glad to have any member—anybody indicate they wanted to testify?

Mr. KILDAY. General Reckord is here.

The CHAIRMAN. We do not want to fuss about this. All they are going to fuss about is not getting the number they want.

Mr. BATES. Mr. Chairman——

The CHAIRMAN. We are not going to pass this bill out today. Let us ask questions of the general and we will get to the National Guard and Reserves later on.

Mr. BATES. Mr. Chairman.

The CHAIRMAN. Wait 1 minute.

So the Department is offering this as an amendment in lieu of what is in the bill?

General BRADLEY. Yes, sir.

The CHAIRMAN. Now, we will consider the amendment by the department. Mr. Bates, any questions?

Mr. BATES. General, in respect to the 837,000 authorized strength, has there been any transfer of personnel or duties, say, from engineers, quartermaster, medical, and so on, in the Army to the Air Corps, or are they setting up any separate organizations for those in the Air Corps?

General BRADLEY. This is a very excellent question, sir, because we are still in the process of trying to separate functions with the Air Force in accordance with the act of 1947. They have not been completed. We still have considerable numbers of units and personnel serving with the Air Force.

We have Air Force serving with the Army. And as you know, we furnish many services to them.

Mr. BATES. That is right.

General BRADLEY. Both in procurement, storage and issue. It is very difficult to separate the two functions.

Mr. BATES. That is where the question of unification comes in, whether or not there is going to be a duplication of facilities or services, say in the setting up of dispensaries, hospitals, quartermaster facilities, and personnel.

There may be a duplication there of what the Army is now doing. And in the light of our desire for coordination and unification, I am hoping that some way will be found by which those services will serve both military facilities.

General BRADLEY. We are actually doing that now.

Mr. BATES. That is right.

General BRADLEY. Many studies are going on now by the direction of Mr. Forrestal to accomplish even more.

Mr. BATES. They have not been completed yet?

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General BRADLEY. No, sir.

Mr. BATES. So they will be continuing?

General BRADLEY. Yes, for some time to come, trying to join up and save by rendering common service.

Mr. BATES. Thank you.

Mr. JOHNSON. May I ask a question?

The CHAIRMAN. Yes, sir.

Mr. JOHNSON. Of course, when you fixed your figure of 837,000 you had to make certain assumptions. You had to assume there were going to be certain groups and services in the Army.

Now, did that include what we know as the Engineer Corps of the Army the people who work on rivers and harbors and all those jobs? Are they going to remain in your organization?

General BRADLEY. Yes, sir. It includes all military personnel, of course, a lot of those are also civilian personnel.

Mr. JOHNSON. I understand that. I am only talking about the military personnel—the district engineers and all those. They are going to stay in your organization.

General BRADLEY. It does include those.

The CHAIRMAN. That is the civil function of the Army, is it not?

General BRADLEY. Yes, sir.

The CHAIRMAN. I hope the civilian function will remain in there. But I am going to call the committee's attention tomorrow to a bill that gives the power to take them out. I hope the committee will not go along and take them out.

Mr. BROOKS. I hope the committee will go along with you, Mr. Chairman.

The CHAIRMAN. I hope the committee will keep the civil functions right there. I will ask the policy committee to meet tomorrow morning at 9:30 to discuss that situation.

Mr. JOHNSON. May I ask one more question?

The CHAIRMAN. Yes.

Mr. JOHNSON. In the event they finally get separated from the Air Forces, then might you not have to have a readjustment of this?

General BRADLEY. No, sir; I do not think so. I do not think the numbers that will remain, involved between us, are such as to affect this number. We have gotten down to a comparatively small number that we may transfer to them or they may transfer to us. So that is not sufficient to affect this to any material extent.

You see, we will continue to furnish them services, in the way of purchasing food, for example.

We are purchasing food for all three services, as well as certain arms, equipment and ordnance, and medical, and so forth, for the Air Force.

Mr. JOHNSON. Well, the Air Forces will probably have a building program on this themselves, to build airports and all kinds of facilities?

General BRADLEY. It is not contemplated that that will be separated. In some cases they do have aviation engineers to maintain as part of their tactical organization.

Mr. JOHNSON. The building is now done by the Army engineers; is that right?

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General BRADLEY. The construction is done by the Army engineers.

Mr. JOHNSON. You think that will continue to be that way after the separation?

General BRADLEY. Well, I should think that that is one thing where we could keep it this way and might even improve on it as we go along by rendering that common service.

Mr. ELSTON. Mr. Chairman.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. General Bradley; you indicate in your statement that you recommend this enlarged organization to permit the Army to construct a combat force capable of instant deployment. Can you construct such a force with less than 837,000?

General BRADLEY. Yes, except that it gets back to the definition of instant deployment. "Instant deployment" does not mean that you can start them out on D-day. It means something that will enable you to start toward a deployment. And, of course, with something less than 837,000 you cannot accomplish the same missions on D-day or immediately thereafter that you can with a greater number.

For example, with 837,000 we had contemplated having 12 regular army divisions, pretty well up to strength, and they would be available in an emergency.

If you cut down that number, you reduce the number of divisions or supporting units to something less than that and that means you will be somewhat delayed getting additional divisions into action which woud have been available had you had the total of 12 and the supporting units that we had figured to go with it.

Mr. ELSTON. I am wondering what you mean by the statement:

even this authorized strength of 837,000 would not produce an army capable of anything more than minimum emergency, one-shot missions.

General BRADLEY. Well, as we know, in the last war we had to go up to something like 8,000,000 Army and Air Force together, of which the army had over 5,000,000.

We expect in any future war you would eventually go way beyond this 837,000. But that 837,000 is a point on your mobilization curve toward which you can do definite planning if we have this authorization.

What we do beyond that 837,000 on the mobilization curve will depend upon circumstances and have to be reviewed some time later after an emergency has appeared or actually happens.

But we can, with this authorization bill, keep our plans current for that number of men and the units it will provide.

Now, we may change units. The next Chief of Staff that comes along may not like the division we have now and make twice as many or make them half as big.

So we would not like to see the future tied down too much to present conditions.

Mr. ELSTON. I would like to ask you, General Bradley, if you can support a 70-group air program with less than 837,000 men on active duty.

General BRADLEY. If you did, you would have to change our present strategic concept of the way we think war would be carried on. In other words, the units provided by the 837,000 are the army units that the planners now plan would be used with 70 groups of Air Force.

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Mr. ELSTON. Well, if you are compelled to cut your force down to 677,000 instead of 837,000, could you, with the 677,000 men on active duty, support a 70-group air program?

General BRADLEY. We could not support it in their total capability. In other words, this capability with 70 groups would be reduced under what it would be if we had enough army units to go along with them.

Remember, we must protect the bases from which they operate. We must furnish them certain housekeeping services. To give an example, there is no use in their having enough planes to go to five bases, we will say, if we do not have the troops to hold but three. That is what I mean.

If they have enough planes to go to five bases, we should have enough troops to hold the five bases. I do not know whether I make myself plain or not, sir.

Mr. ELSTON. Well, I think you do, General, but maybe not entirely in all respects. In other words, if the Air Force feels that they need a 70-group program in order to adequately defend the United States, what we want to find out is whether or not, if that is their viewpoint, the 677,000 men would be sufficient in the Army to adequately support them.

General BRADLEY. We do not think it would. We would be short in service support and we would be short of troops to protect the bases which their 70 groups would be capable of operating from.

Mr. ELSTON. How many groups would the 677,000 support?

General BRADLEY. We figure approximately 50 groups that we could support properly.

Mr. ELSTON. That is all.

Mr. DURHAM. After we authorized the 70 groups last year you came in and asked for 17,000 more troops. Was that taken into consideration? Congress has authorized the 70 groups in your planning.

General BRADLEY. Yes, sir. In the Air Force's original plans for a 70-group program they figured on a total strength in the Air Force of 400,000 men. The number of men included in the 820,000 was sufficient to furnish the necessary housekeeping services to this number of men in the Air Force. As a result of a restudy of their missions, the Air Force raised their requirements to 502,000 men. Their reasons for this increase were explained to your committee last spring. In order to furnish the necessary housekeeping services to this additional 102,000 men, the Army estimated that it would require 17,000 additional men. That is why we raised our figure to 837,000.

Mr. ELSTON. But if you were to carry out that 70-group plan at the present time you would have to ask for 17,000 more troops in your present planning?

General BRADLEY. We would have to ask for that number of service troops.

Mr. ELSTON. Service troops?

General BRADLEY. Then, if we were going to be able to perform our function of holding the additional bases which they could use with the additional number of troops we would need additional combat units, particularly division and anti-aircraft.

The CHAIRMAN. But it might be possible, General, that the bases would be so located where it would not be necessary for ground troops to defend them, for instance in the United States. The capacity of a

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long-range bomber might be of such nature that it would make a long-range raid from a base in the United States. Of course, you have reference to bases located close to the enemy?

General BRADLEY. Yes, sir. You may remember that last year, in testifying before this committee, I quoted General Spaatz. If I may, I would like to quote him again.

The CHAIRMAN. Do.

General BRADLEY. Because I think he probably has had more experience in strategic bombing than any other officer, certainly, that we have. If I may, I would just like to read that.

The CHAIRMAN. It is your pleasure.

General BRADLEY. I made this statement:

> Only last week, Gen. Carl Spaatz, in my opinion the foremost air strategist in the world, stated publicly that anyone who believed we could fight a future war with bombers based on the North American Continent, is suffering a delusion. General Spaatz also asserted that for a strategic bombing effort of the future to succeed would require bases nearer the target than many people realize.

You might deliver an initial offensive from this country if you had bombers of sufficient range. Personally, I believe if strategic bombing is to be carried on continuously and finally be effective your bases must be moved nearer and nearer to the enemy as you go along.

The CHAIRMAN. And you sum up by saying that it is necessary to have an actual strength of 837,000 in the regular service to properly support the missions of the 70-air group?

General BRADLEY. And get maximum use out of it.

The CHAIRMAN. Then, with 677,000 and a 70-air group, you cannot, then, get maximum mission out of the 70-air group?

General BRADLEY. In my opinion you could not, because they would be limited in the bases from which they could operate and we would also be limited in the service which we could render.

The CHAIRMAN. Mr. Van Zandt.

Mr. VAN ZANDT. General, I wonder if you would tell us what effect the joint usage of facilities ordered by Mr. Forrestal is having today upon personnel?

General BRADLEY. You mean in general or do you have any specific——

Mr. VAN ZANDT. In general.

General BRADLEY. It is saving personnel. It is a rather slow process, of course, to make these studies of how and where we think we can combine and save personnel, but such studies are going on all the time.

For example, a test is being made in the Sixth Army by a board headed by General Clark in which they are testing an army area, as to what can be done in the way of consolidations, for example, in the handling of recruits, the use of ports in San Francisco, and so on.

There are many studies of that nature going on, I think many more of them will be carried on.

Mr. VAN ZANDT. Will it not benefit you in the number of men that you have to assign in the Air Forces?

General BRADLEY. You mean by consolidating?

Mr. VAN ZANDT. Yes; the joint use of facilities.

General BRADLEY. Yes; undoubtedly it would.

The CHAIRMAN. Mr. Cole.

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Mr. COLE. General, which, in your opinion, would be preferable from the standpoint of your responsibility for national defense, assuming that you are to be limited in your personnel strength to what it now is of 677,000: To have a 70-air group with a limited capacity as you have indicated or a lesser group, a smaller group, with full capacity.

General BRADLEY. Well, I do not think there is any question but what even keeping the Army at 677,000, the more air groups you add to the present contemplated approximately 50 groups, you are going to increase your defense and your power of offense to some extent.

But my statement was that you would not increase it to the same extent that you would by increasing the Army that would go along with it to protect its bases and service it.

If you went to 70 groups and we had to furnish the service of them, that would very materially reduce the number we would have available out of that 677,000 for combat units, because we would have to take many more than we now contemplate in that to service the additional groups of the Air Force.

Mr. COLE. Then, you will revise your statement to the extent that it is possible for you to support a 70-air group in its full potential with your 677,000 men.

General BRADLEY. No, sir.

Mr. COLE. But in doing so it would diminish your capacity to do the other work that you are responsible for?

General BRADLEY. Well, my misunderstanding of your question was in the word "service." If you are talking about service support, we can service support them out of the 677,000, but by so doing we would have to reduce the number of combat units to a point where our capability in the Ground Forces would be much reduced out of what we would expect to get under 677,000.

Mr. COLE. Which would you prefer to have: A 70 air group and be able to support them in a way in which their potential would be limited and not up to its full potential or to be able to support a smaller air group and to support them to the full extent of their striking force?

General BRADLEY. I would prefer to have a smaller number of air groups if it meant that you were not going to be able to hold any bases and service them properly.

Mr. COLE. That seems sensible to me.

The CHAIRMAN. Now——

Mr. COLE. Mr. Chairman, on that same subject——

The CHAIRMAN. I just want to ask him a question. Let me ask you this, General: Then you say that 677,000 men will be sufficient to defend adequately whatever bases it would be necessary to set up for a 70 air group, but in doing so you would limit your striking power.

General BRADLEY. Yes, sir. And I would not go so far as to say "adequately defend," because that is a hard term to define.

The CHAIRMAN. Well, to defend, then. The 677,000 enlisted strength today is sufficient to take care of the bases to carry on strategic warfare under the conception of where they should be located by General Spaatz or anybody else, but if you did so, then it would diminish your ability to have a sufficient striking force, is that correct?

General BRADLEY. If you are referring to service support, we could furnish such support at the expense of our ability to carry out our

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combat missions. However, as I pointed out before, such an arrangement would completely change our present strategic concept. With your permission, I would like to expand on this statement. Apparently, there has been a tendency in this country during the last couple of years to place almost our whole dependence for defense on air power and our possession of the A-bomb. I wish that I could agree that such a concept is sound. I believe most of us agree that the first step to be taken in case of hostilities is the launching of a powerful strategic bombing effort. Only a very few of the people in the services believe that such an offensive would in itself be decisive and end the war. We all agree that the threat of such an offensive is a leading deterrent to war. We all agree that it would greatly affect the ability of any possible enemy in their later efforts in the war. Most of us believe that after starting this concentrated strategic bombing effort that many more steps toward winning the war would be necessary.

For example, we must protect vital installations in the United States against hostile attack. We must remember that strategic bombing is a two-edged weapon and we know that strategic bombing is being developed by some countries which did not have such a weapon during the last World War. We must hold with ground troops those bases from which effective bombing could be brought against our vital industrial areas. Even then it may be impossible to prevent isolated cases of air attack. We must hold with combat ground troops bases from which our strategic bombing can be brought against enemy targets. All of the required strategic bombing cannot be done from the United States even though I appreciate that such bombing could contribute materially to the strategic bombing effort. Finally, if we are eventually to bring our great strength to bear against any possible enemy, we must be prepared to do it with ground troops as well as air. If in placing too great a reliance on air power alone, we lose all areas or footholds from which we might bring our great power to bear, we would, in my opinion, be faced with a very long period of hostilities. And, of course, in order to do these things we must have a Navy that will keep the sea lanes open. I cannot express too strongly my feeling that in our efforts to find an easy solution to defense we may find ourselves facing the possibility of a very long, costly, and maybe disastrous war in any future emergency.

Mr. HARDY. Mr. Chairman, I would like to ask a question in that same connection.

General, I cannot quite follow these figures. I understood you to say a while ago that your original figure of 820,000 was increased by 17,000 service troops in order to service an increase of from 55 air groups to 70 air groups.

General BRADLEY. Last year when I testified here, the hearing was on the basis that the Army had to be increased to carry out its occupation duties and still have something left over for a reserve of combat unit for use as a defense and for a striking force.

In the course of those hearings it came up also that the Air Force wanted to increase its strength from what it was then, 55 groups, to 70 groups. The Air Force also stated that a restudy of their missions showed a requirement of 502,000 men for 70 groups instead

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of 400,000. This addition of 102,000 required us to increase the authorization which we were requesting by 17,000 men in order to furnish that service.

Mr. HARDY. Well, the point that I cannot quite see is if you had to increase it by 17,000, I cannot quite see why you have got to go from 677,000 up to 837,000 if the Air Force is going to operate a 70-group force.

General BRADLEY. Remember, I am talking about supporting the Air Force in two ways. One is a service support and by that I mean running the ports and handling their supplies and buying them, issuing them, furnishing them medical care, and so forth.

That is the service support. And that is what the 17,000 was added for. The addition in there is to furnish combat units—divisions of various types, engineers, antiaircraft units, and so on—to protect the bases from which the 70 groups would operate in case of emergency.

Mr. HARDY. Well, that was contemplated in your original 820,000 then, was it, that you would have a sufficient force to protect all the bases for a 70 group?

General BRADLEY. Yes. The plans at that time——

Mr. HARDY. You only had 55 groups, did you not?

General BRADLEY. Yes, but the figure that we were figuring on, 820,000, as an authorization, contemplated almost the same deployment for the 55 groups that they had then as they now want to employ with the 70.

The number of bases for the 70 groups is not much different from that that they had at that time, which was 55. And they were in process of increasing this number. So the number of bases has not been increased very materially, but it has been decreased when you drop from the 70 down to the 48. That is in the strategic planning.

Mr. GAVIN. Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania, Mr. Gavin.

General BRADLEY. May I add just one more thing?

The CHAIRMAN. Yes, sir.

General BRADLEY. Involved in that increase to 70 groups was an increase from 400,000 to 502,000, an increase of 102,000 more men for whom we have to buy clothes, and support in general.

Mr. HARDY. I understand all that.

Now, General, go just one step further. How many air groups will your 677,000 men take care of?

General BRADLEY. Well of course that is variable. It might be variable from, say 50 to 60, or somewhere in there. But the minute you increase the number of groups and we have to furnish the service support to them, they have to come out of combat units and combat capability.

Mr. HARDY. Well, your original authorization was for 820,000, figuring at that time you would take care of only 55 air groups, is that not correct?

General BRADLEY. Fifty-five air groups, yes, or approximately 400,000 men.

Mr. HARDY. But now you say you could take care of 70 air groups with that same complement plus 17,000 service troops.

General BRADLEY. I am afraid I do not get what you are aiming at.

The CHAIRMAN. May I try to clear it up. Here is what I think

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the gentleman has in mind. The 677,000 men will adequately furnish the logistics and the supplies and protect the bases, but it will absorb to to such an extent that he could not carry on a combatant unit or a striking force at the same time, is that not correct?

General BRADLEY. That is correct. And the units that we will have out of the 677,000 will be at reduced strength.

The CHAIRMAN. That is right.

General BRADLEY. It will be a lesser number, and they will be at reduced strength as compared to what they were——

The CHAIRMAN. In other words, 677,000 men can take care of the 70 air groups, but at the same time it cannot take care of the air group and carry on an offensive warfare.

General BRADLEY. Nor adequately protect some of the bases they might use with that number of groups, and furnish other necessary defensive forces.

The CHAIRMAN. That is right.

Mr. GAVIN. Mr. Chairman——

The CHAIRMAN. The gentleman from Pennsylvania, Mr. Gavin.

Mr. GAVIN. For the money already appropriated, how many air groups will it provide for?

The CHAIRMAN. May I suggest that Secretary Symington is going to be here tomorrow and he is going to talk about the air. I offer the suggestion that we confine our questions to the Ground Forces as much as possible.

Go ahead and answer his question, though, General.

General BRADLEY. I am afraid I cannot answer that because I am not sufficiently familiar——

Mr. GAVIN. Well, how many are they set up for now, General, 55 or 59?

General BRADLEY. For 1950?

Mr. GAVIN. Yes.

General BRADLEY. Forty-eight.

Mr. GAVIN. Forty-eight.

General BRADLEY. They have more than that at the present time.

Mr. GAVIN. And the appropriations, I presume, would cover 48?

General BRADLEY. Yes, sir.

Mr. GAVIN. Do you think 677,000 men would adequately take up maybe 55 or 59 air groups that you could support and coordinate all the way around?

General BRADLEY. We would give them the service support, but we would have to reduce——

The CHAIRMAN. That is it.

General BRADLEY. It would reduce our capabilities materially and delay the time it would take us to mobilize and get certain units into the field, because in addition to the combat units which we must have ready we must also provide for a mobilization base for a great expansion after the emergency starts.

Mr. GAVIN. Well, with the appropriations made for the 70 air groups, you would not pick up today 837,000 that you already established.

General BRADLEY. No, sir; I am not prepared to recommend an army of 837,000 under present conditions.

Mr. GAVIN. That is right.

Mr. KILDAY. Mr. Chairman.

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The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. Of course, General, what we did last year, when we added $822,000,000 to the budget in the appropriation bill, was to provide for procurement which we hoped to have in 1952, I believe it was, and we added nothing for additional Air Corps personnel for this fiscal year.

General BRADLEY. No, sir.

The appropriation was for a 790,000-man army plus the 110,000 trainees.

Mr. KILDAY. Yes; but you mean when we added $822,000,000 on the floor of the House to the bill as reported by the Appropriations Committee it included nothing for personnel.

General BRADLEY. That was procurement.

Mr. KILDAY. That was all matériel.

General BRADLEY. Yes, sir.

Mr. KILDAY. To get the orders started, hoping to have the equipment for 70 groups delivered in 1952?

General BRADLEY. That is right.

Mr. KILDAY. And it would be by that time that you would have to have the additional personnel?

General BRADLEY. Yes, sir.

Mr. KILDAY. Not immediately, because we would not have the 70 groups until 1952.

General BRADLEY. You see, the 790,000 for which we had appropriations for 1949 fiscal year set up the necessary units but had some of them at reduced strength, but not as much reduced strength as we will be under the 677,000. It would have been easier to have expanded those units from 790,000 up to 820,000.

The CHAIRMAN. In other words, I will repeat it again to keep the record straight, the 677,000 men can service a 70 Air Group, but when you do that it limits your capacity to perform other military duties and functions.

General BRADLEY. That is correct.

The CHAIRMAN. That is right.

Mr. BATES. Mr. Chairman.

The CHAIRMAN. Mr. Bates.

Mr. BATES. A year ago, General under the urging of the military authorities we enacted a so-called selective-service law because of world conditions. Now, from the standpoint of world peace, do you think conditions today have deteriorated or conditions today are more deteriorated than what they were a year ago from the standpoint of world peace?

General BRADLEY. I am not too sure whether I should answer that in full in open session or not, Mr. Chairman.

Mr. BATES. I will withdraw the question.

General BRADLEY. I will be glad to answer that question off the record for you.

Mr. BATES. I will withdraw the question.

The CHAIRMAN. Any further questions?

Mr. ANDERSON. Yes, sir.

The CHAIRMAN. Mr. Anderson.

Mr. ANDERSON. I wanted to ask General Bradley how many are in the National Guard at the present time?

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General BRADLEY. The Army National Guard is approximately 300,000.

Mr. ANDERSON. Approximately 300,000.

General BRADLEY. Yes, sir.

Mr. ANDERSON. And how many men in the Organized Reserve?

General BRADLEY. Approximately 740,000.

Mr. ANDERSON. That is 740,000 of your authorized 980,000, is that right?

General BRADLEY. Yes, sir.

Mr. ANDERSON. Are you able to supply these 740,000 reserves with the equipment, the armories, and the rest of the material that they need to function properly?

General BRADLEY. Not at the present time.

Mr. ANDERSON. I found while I was home that most of the complaints came, not from the National Guard, but from the Organized Reserve. They feel as though they are the orphans of the storm; they are being left out at the edge of the table and picking up nothing but the crumbs; and that the Army is not paying enough attention to them.

I am wondering what your plans and your requests for appropriations contemplate for the coming fiscal year in connection with the Organized Reserve?

General BRADLEY. Our difficulty with furnishing the Reserve officers with proper instructions have been due to several causes: (1) Lack of funds; (2) lack of suitable instructors and administrators; (3) lack of proper training facilities like armories and places for them to train; (4) lack of proper equipment; and (5) and probably a very big one, is the situation which we have in the Reserve today where we have officers of all grades from colonel to second lieutenant and of all stages of experience from men who have commanded regiments in combat down to a man who just graduated from ROTC and other colonels, we will say, who have had no experience in combat, but was purely in administrative work, and add to that all the branches and services that they are in, and it makes the instruction very, very difficult.

Now, we are trying to straighten that out at the present time, and I have brought a senior officer into the Department of the Army Staff with the sole mission of trying to coordinate and push this question of training for the reserve components and particularly, as you say, try to help straighten out the reserve officer's instruction.

Mr. ANDERSON. Well, as far as the use of armories go, General, has any effort been made by the services for the joint use of armory facilities?

General BRADLEY. We are working on that now, sir, all the time, trying to increase——

Mr. ANDERSON. Because I find the Naval Reserve program has proceeded at a much more rapid pace than that of the Army. They have armories established and well-organized units in training, and it seems to me that in many instances those armories could be used by the Army and the Air Force Reserve organizations.

General BRADLEY. We are trying to work out that arrangement. But I might call your attention to the fact that that part of the Naval Reserve you are talking about corresponds to our National Guard who also have armories and are making rapid strides in their training. The Navy has just the one reserve.

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Mr. ANDERSON. The point is, do we have to have an armory for every type of organization: National Guard, Navy Reserve, Army Reserve, Air Force Reserve? Why can we not combine the use of these facilities for these various branches of the service?

General BRADLEY. We are trying to do that, sir, but one of the difficulties and what delays us in making these arrangements is the care and accountability of property. One unit that has its property stored there does not like too many people using it and losing it as long as they are accountable for it.

There is not enough storage space in some of the armories to handle the equipment required by the various units. That is one of the things we are trying to straighten out.

Mr. ANDERSON. Well, it seems to me that that is a rather minor detail that ought to be cleared up very easily.

General BRADLEY. I think we can.

Mr. ANDERSON. Fine. I am glad to hear you are working on it.

The CHAIRMAN. Any further questions by any members of the committee?

Mr. HAVENNER. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from California, Mr. Havenner.

Mr. HAVENNER. General, you stated that the Army recognizes that there is a reasonable limit to what a nation can safely spend for security without imperiling its economic survival. In your thinking on that subject, did you assume any percentage or approximate percentage of the total annual budget as a safety limit?

General BRADLEY. No, sir; I do not believe we are in a position to express an opinion on that. We know our own problems, but I am afraid we do not know the problems of the other Departments enough to express an opinion on how much or what proportions we should get. I think that is something which the Congress can decide after they have heard all of the Departments.

Mr. HAVENNER. Mr. Chairman, I have one more question.

The CHAIRMAN. Go right ahead.

Mr. HAVENNER. You stated, General, at present it is impractical to assume or even envision that the National Guard and Organized Reserve can attain these proposed strengths without UMT or some similar legislation.

Does that mean that this committee would understand that, if we enact the proposed authorization here, the proposed strengths of the National Guard and the Organized Reserve, that the enactment of that legislation would amount to sort of a legislative commitment for enactment of UMT or some similar legislation in the future?

General BRADLEY. No, sir; I do not believe it commits anybody in any way. It merely sets a figure high enough so that if you decided to pass UMT you would not have to come back and rehold these hearings and set a new authorization.

Mr. HAVENNER. It would be authorizing a strength that in your opinion could not be attained without UMT or some similar legislation.

General BRADLEY. Or an emergency. If there were an emergency, you might very well, by congressional action and by appropriation, fill all National Guard units to war strength, for example.

And that would involve about, as I remember it, 750,000 to fill the presently authorized units to war strength. So you could do

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that by appropriations without going through another authorization bill.

The CHAIRMAN. There is another thing. It does not even authorize the Appropriations Committee or the Congress to give money enough to carry out what is written in this bill; does it?

General BRADLEY. No, sir.

The CHAIRMAN. It merely authorizes, but it does not require it.

Mr. HAVENNER. Mr. Chairman, I want to make it very clear, when I did favor these authorized strengths, I was doing it to guard against an emergency and not provide a commitment for UMT in the future.

The CHAIRMAN. I do not think we are going to get struck by UMT for some days yet.

General BRADLEY. I tried to make it plain——

The CHAIRMAN. Now, any other questions from any members of the committee?

Mr. COLE. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. General, who are the individuals to whom reference is made when you use the expression "1-year enlisted volunteers for training"?

General BRADLEY. Last year the Congress authorized 110,000 for the Army, volunteer enlistments for 1 year only, and they had certain obligations to perform after that year.

Mr. COLE. Yes; but there was nothing said that they were brought into the service for training only.

General BRADLEY. That "training only" was probably a poor word to use. They were available for other duties, but the primary purpose was to train them for duty, and that was the basis on which it was passed by Congress.

Mr. COLE. That is right. There is nothing in the selective-service law that contained any language to indicate that these men were brought into the service for training only.

General BRADLEY. It limited their use, you see, because we could not send them out of the country.

Mr. COLE. It only said that these 1-year enlistees could not be sent out of the country.

General BRADLEY. Yes, sir.

Mr. COLE. Except for that, they could be used for anything. So you would have no objection to changing that expression to conform with the language used here?

General BRADLEY. No, sir.

The CHAIRMAN. Has the staff any questions to propound to the General?

Mr. BLANDFORD. Yes, sir; I would like to ask the General some questions with regard to rank distribution.

How is the distribution of officers by grade determined in the Regular Army?

General DAHLQUIST. The maximum is determined by a percentage of authorized strength. The minimum is whatever is set by the Secretary of the Army.

Mr. BLANDFORD. There are actually two factors, then, General. One is the Secretary's determination, and the other is your actual authorized strength?

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General DAHLQUIST. Well, the maximum would be a percentage of the authorized strength.

Mr. BLANDFORD. That is not in effect at this time, but the Secretary could set——

General DAHLQUIST. That is in effect at this time. For example, in our grades of lieutenant colonel and major, we are authorized 14 and 19 percent of authorized strength. The Secretary has actually set it at 14 and 19 percent of actual strength.

Mr. BLANDFORD. And your colonels are set by law at 8 percent, and they are actually set now at 5.6?

General DAHLQUIST. On the Army as a whole, they are slightly over 5 percent.

Mr. BLANDFORD. In other words, your distribution can then be based on authorized strength, not "on board" strength, as in the Navy.

General DAHLQUIST. That is correct, so far as the Regular Army only is concerned.

Mr. BLANDFORD. That is correct. Now, has any consideration been given to any disparity in opportunity of promotion between the Army and the Air Force and the Navy? In other words, the Navy's distribution of rank is based upon "on board" strength, actual strength. Your distribution of rank is based upon authorized strength.

General DAHLQUIST. That is correct.

Mr. BLANDFORD. Has any consideration been given to any possible disparity of opportunity for promotion?

General DAHLQUIST. Yes. We have checked what the actual percentages in grades are, and it so happens we are the least of the three services.

Mr. BLANDFORD. So that has been discussed.

General DAHLQUIST. That is not quite correct. We are higher than the Air Force in the higher grades, but lower than the Navy in the higher grades.

The CHAIRMAN. Are you through?

Mr. BLANDFORD. Yes, sir.

The CHAIRMAN. Now let me get that in my mind. The officer strength of the Army is based upon the authorized strength, 837,000 men?

General DAHLQUIST. The officer strength—the grade distribution of the Regular Army——

The CHAIRMAN. Wait a minute, General. I know the difference between the grade distribution and the officer strength. Now, the total officer strength is based upon the 837,000?

Mr. BLANDFORD. No.

General DAHLQUIST. The total officer strength from year to year is figured by the anual appropriations.

The CHAIRMAN. Well, it is based on how many enlisted men you have; is it not?

General DAHLQUIST. No, not entirely, because, for example, today we are using some 827 officers on military government which has nothing to do with enlisted strength whatsoever.

The CHAIRMAN. All right. You have a total authorized strength, including officers and everybody, of 837,000. Now, so many of those are enlisted men. And, based on so many enlisted men, you determine you are entitled to so many officers; do you not, and that would

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be known as the authorized officer strength. Is that not the way you arrive at the number of officers you have?

General DAHLQUIST. Not entirely. We arrive at the number of officers on our total "on board" strength, Regulars and non-Regulars, depending upon the functions that we are performing. Our percentage of officers in the last 3 years has been gradually going down as we got rid of jobs which were purely officer jobs.

The CHAIRMAN. I see. Then you have no fixed formula to determine how many officers you have in contrast to the number of enlisted men you have.

General DAHLQUIST. That is correct, so far as the total Army on active duty is concerned.

The CHAIRMAN. The Regular Army, I am talking about.

General DAHLQUIST. And, so far as the Regular Army, there is no fixed formula because we have adopted the proposal that we should not fill our active-duty officer strength with Regulars.

The CHAIRMAN. All right. Now, officers in grade is based upon the same thing. It is based upon the same formula?

General DAHLQUIST. No.

The CHAIRMAN. You say you got 5 percent generals. Now that is based upon the same formula that you determine the total number you have.

General DAHLQUIST. We got a fixed maximum authorization for grades for the Regular Army officer strength. That is fixed by the law as a maximum. On the total officer strength, for example, today we have 22,000 Regulars, but we have almost 70,000 officers.

If we applied the same proportion that we do for the Regulars to the 70,000, we would have an excessive number in the top grades, because, as your Army increases, the necessity for top grades does not increase proportionately.

So today, although we have authorization for 8 percent colonels, over all, our actual percentage of colonels in the total Army is approximately 5 percent.

The CHAIRMAN. Well, the memorandum I have has broken down the officers by grades. You have 5 percent for generals.

General DAHLQUIST. That is five-tenths of a percent. For example, the law permits us to have three-quarters of a percent maximum in the Regular Army.

The CHAIRMAN. All right. Now, colonels.

General DAHLQUIST. But we actually only have a half of 1 percent.

The CHAIRMAN. Only half of 1 percent?

General DAHLQUIST. That is correct, sir.

The CHAIRMAN. And the law allows you——

General DAHLQUIST. So far as permanent Regular Army generals are concerned, three-quarters of a percent of the authorized strength of the Regular Army officer corps only.

The CHAIRMAN. All right.

Any further question, Mr. Blandford?

Mr. BLANDFORD. Yes, sir.

Now, General, just to make it clear, under the present arrangement, 19 percent of your Regular officers may have permanent commissions as majors and 14 percent may hold permanent commissions as lieutenant colonels; is that correct? That is based upon 31,000 officers.

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General DAHLQUIST. The present maximum grade distribution in the Regular Army is 8 percent colonels, 14 percent lieutenant colonels, 19 percent majors, 23 percent captains, and 36 percent lieutenants.

Mr. BLANDFORD. All right. Now, if this bill is enacted into law, and the Secretary does not change that prescribed number, you will then base that percentage upon 40,000 officers instead of 31,000 officers and permit a large increase in permanent promotions; is that correct?

General DAHLQUIST. It would be possible for the Secretary to do so.

Mr. BLANDFORD. It would be possible.

General DAHLQUIST. However, he has had the authority for 2 years, has not invoked the authority, and has no plan to invoke the authority. We filled our permanent grade of colonels in order to get our attrition going, because we had a World War I hump. It so happens that today, on permanent colonels, the junior has 24 years' service. The junior permanent colonel in each of the other services goes many years below that.

Mr. BLANDFORD. That leads me to my last question, then. What are your plans, if you have any definite plans, for increasing the actual number of Regular Army officers, assuming that you would be authorized 40,000 in lieu of the present 31,000?

General DAHLQUIST. Our present plans would be that if we stabilize at approximately the strength we have today we will continue over approximately a 10-year period to come to a total authorized strength of 30,600.

Mr. BLANDFORD. You will not go to 40,000, then?

General DAHLQUIST. Not unless we stabilize at a higher active-duty strength.

The CHAIRMAN. Now, General——

General BRADLEY. Are you going to ask another question?

The CHAIRMAN. Yes; I want to ask a question.

General BRADLEY. About the 40——

The CHAIRMAN. About this amendment, it says not to exceed 40,000. Now a person on the floor might say to me: "Tell us how you arrived at 40,000 officers." I would like for you to tell us how you arrived at 40,000 officers if it is not based upon something.

General BRADLEY. That is approximately half of the officers that would be required to officer an 837,000-man Army. We are opposed to going to any such figure if we can get our officers otherwise. As General Dahlquist just stated, our present strength in Regular officers is about 22,000, and we have adopted a 10-year program to arrive at the 30,600 which was authorized prior to this. There might be some circumstance, however, arising in the future in which you could not get officers without offering them a permanent commission.

In that case you might want to go to a 40,000, or have to go to a 40,000 figure to officer the Army that you had at that particular time. But we have no intention of going to that, and anytime in the foreseeable future, because conditions would not make us do it.

It was put there merely with the idea that someday you might have to go to the 40,000. But we do not contemplate any steps now which would go beyond the 30,600 toward which we have been working for the last couple of years.

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The CHAIRMAN. And you determined you need 30,600 on account of so many assignments and so many billets; is that the way you determined it?

General BRADLEY. I believe I had better let General Dahlquist answer that because he knows the details of it.

The CHAIRMAN. It looks like to me—this is off the record.

(Discussion off the record.)

Mr. BROOKS. General, may I ask you this question: Do you mean that normally your wartime officer requirement would run about 10 percent? Is that true?

General BRADLEY. That is about right.

Mr. BROOKS. Now in time of peace, even though we have a cold war, I figure the requirements would not exceed half of wartime requirements. Is that what you have in mind?

General BRADLEY. No, sir; that is not quite right. The 837,000 is not a wartime requirement. It is merely as I say a point on the mobilization curve which you could reach without additional legislation.

Mr. BROOKS. Eighty thousand would be your normal officer complement.

General BRADLEY. Approximately 80,000 would be the officer complement for the Army.

Mr. BROOKS. Now in time of peace you take 50 percent. Is that the basis on which you reduce it, from 80,000 to 40,000?

General BRADLEY. No, sir; this 40,000 would be Regular officers and the rest of the 82,000 or whatever is required by the requirements and permitted by the Budget and the Congress would be Reserve officers on extended active duty.

Mr. BROOKS. Oh, I see. So you make up your officer deficiency by calling Reserves into active duty.

General BRADLEY. We at the present time have only——

Mr. BROOKS. Now you are keeping your Regular officer requirements even below the minimum of 40,000 by calling men from the Reserves temporarily to be trained as officers.

General BRADLEY. You see, of the approximately 70,000 officers we have on active duty today, only 22,000 of them are Regular officers.

The CHAIRMAN. Now in that connection I would like to ask General Dahlquist: How do you determine how many Regular officers you have in the Regular Establishment now? I am not talking about the Reserve officers called back. How do you determine how many officers shall be in the Regular Army?

Is it based upon the enlisted men or what is it based on?

General DAHLQUIST. Let us first forget about the terms "Regular Army" and "Reserve" and think about the active Army.

The CHAIRMAN. I think that is confusing.

General DAHLQUIST. Well, we analyze the jobs we have to do.

The CHAIRMAN. That is right.

General DAHLQUIST. It so happens because of our civil functions, our military government, our very large Reserve component which has officer instructors, and the overhead we have to have—the schools—we figure out the officers needed for that. Now, when it comes to troop units, we average about 1 to 20 men for troop units.

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A division of about 16,000 men has 800 officers. So we cannot set our officer commitment on the basis of the enlisted men on active duty because of the tasks performed by officers.

The CHAIRMAN. I see.

General DAHLQUIST. Now the problem comes up: How many of those should be Regulars? The easy system, the easy solution for us would be to have them all Regulars, but if we did that, we would first fasten upon the country a tremendous, large corps of career men, the expense of which is high because of the retirement provisions.

Second, we get out of that group only that many trained men. Therefore, when the war was over and the problem of increasing our Regular Army came up, General Eisenhower, before, I believe both committees, stated:

> We want to keep our Regular officer strength as small as possible, for two reasons: First, so that sometime in the distant future we have not got a machine which is beyond the capability of maintaining; and, second, to use as many spaces as possible to train Reservists on active duty. We ultimately hope that we will get the bulk of our ROTC graduates to come on active duty for 2 to 3 years before they go to civil life. Some of them will stay in the Regular Army. The remainder will go to the normal civil pursuits. We will then have a well-trained Reserve Corps. The number we must have in the Regular Army is that number that you must have to manage the organization and to give you a firm base. There is no empirical figure we can arrive at.

The CHAIRMAN. I see.

General DAHLQUIST. If we could, with 30,000 and an Army at strength of 837,000 we would do it, but our best estimate is that approximately half of our officers on active duty must be career men.

The CHAIRMAN. That is right. Then, your plan is to keep approximately half of them, what I would call the Regular, and then to draw the balance from the Reserve.

General DAHLQUIST. Yes; and as time goes on from the new reservists who need active-duty training.

The CHAIRMAN. Now, members of the committee, we will take a recess until tomorrow. And General Bradley, will you and your staff come back?

General Reckord, do you want to make any statement about the generosity of the committee in giving you such a large group of National Guard? Are you in favor of it or against it?

General RECKORD. We like the idea of a large group, but we are not in favor of the bill as written at the present time. We would like to be heard.

The CHAIRMAN. Yes, sir; we will be glad to give you a hearing.

(Whereupon, at 12:05 p. m. the committee adjourned.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Friday, January 28, 1949.

(The committee met at 10 a. m., Hon Carl Vinson (chairman), presiding.)

The CHAIRMAN. Let the committee come to order.

General Bradley, will you and your staff please come around?

Now, General, when the committee recessed yesterday, while we were considering H. R. 1437, we had under consideration your amend-

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ment to section 102. Have you any additional amendments to that section that you desire to call to our attention?

General BRADLEY. Yes, sir; I would like to suggest one additional change.

In section 102 (c)——

The CHAIRMAN. Let us see, now——

General BRADLEY. We would suggest that you cross out the words:

as the President may from time to time direct.

The CHAIRMAN. (c)?

General BRADLEY. 102 (c).

The CHAIRMAN. (reading):

(c) There is hereby authorized for the National Guard of the United States a personnel strength, to be distributed among the several States, Territories, and the District of Columbia, of 750,000 officers, warrant officers, and enlisted persons, excluding those serving on active duty in the Army—

is that the one you are dealing with?

General BRADLEY. Yes, sir; and the way you have read it is the way we would like to have it considered.

Yesterday, the way it was read off, it had an additional clause in it—in the copy you had yesterday.

The CHAIRMAN. Then, what you are proposing now is:

(c) There is hereby authorized for the National Guard of the United States a personnel strength, to be distributed among the several States, Territories, and the District of Columbia of 750,000 officers, warrant officers, and enlisted persons, excluding those serving on active duty in the Army of the United States that are counted within the personnel strength of 837,000 authorized in subsection (a) of this section.

General BRADLEY. That is the way we would like to have it read, sir.

The CHAIRMAN. Now, may I ask you: Does that meet the approval of the National Guard Association?

General BRADLEY. We understand and have been assured that it does.

The CHAIRMAN. General Reckord, come around here a minute, please, sir.

General RECKORD. Yes, Mr. Chairman.

The CHAIRMAN. General, come right up to the table.

General RECKORD. Yes, sir.

The CHAIRMAN. I received your letter this morning. And I am regretful that I didn't have the clerk send you a copy of the bill when it was introduced so you would be conversant with it at that time. But I understand you have had an opportunity now to consider it?

General RECKORD. Yes, sir.

The CHAIRMAN. Have you any objection from your organization to the section as proposed by the Department of the Army?

General RECKORD. As now proposed?

The CHAIRMAN. Yes.

General RECKORD. We are in accord.

The CHAIRMAN. Then, we are happy to know that the National Guard has no complaint about the phraseology.

General RECKORD. Of that particular section.

The CHAIRMAN. Of that particular section.

General RECKORD. We have no complaint. In fact, we approve it.

Mr. COLE. Mr. Chairman, may I inquire if this amendment which is now suggested is adopted and that expression "as the President

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may from time to time direct" eliminated, then who is to make the distribution of the National Guard among the several States?

General RECKORD. Mr. Cole, the answer to that is that allocations have been made to the States and they have been accepted by the States for the total number of units in the troop-basis plan which the Department has asked the National Guard to furnish toward that general plan in the whole scheme of defense. The States having accepted those allotments, they do not now wish by a new law to place themselves or have themselves placed in the position where any arbitrary change of allotment could be made without reference to the States.

The way the bill was proposed yesterday, it would have, in our opinion, amended section 60 of the National Defense Act, which now protects the State on all units that are wholly within the State. They cannot be changed or reallocated without the consent of the governor of the State concerned, under section 60.

This language which General Bradley has presented this morning will not amend section 60 of the National Defense Act, and is therefore entirely satisfactory to us.

The CHAIRMAN. I might add, General, there is grave doubt in my mind as to whether the language in the bill as presented yesterday would supersede or nullify section 60. But to make it absolutely sure that there is no doubt about it, why, you and the Department have gotten together?

General RECKORD. Yes, sir; we have.

The CHAIRMAN. All right; thank you very much.

Is there any other phase of section 102 that you are concerned about?

General RECKORD. No, sir; I think we have no concern.

The CHAIRMAN. All right.

Now, are there any further questions?

Then, you are offering, General, a new amendment to section 102?

General BRADLEY. Yes, sir.

The CHAIRMAN. Let the staff representative read the new amendment in its entirety to section 102.

Mr. BLANDFORD. Mr. Chairman, you want just 102 (c)?

The CHAIRMAN. Read the whole amendment. The proposal is to strike out entirely section 102 and substitute the following.

Mr. BLANDFORD. Substitute in lieu thereof section 102 (a). [Reading:]

There is hereby authorized for the Army of the United States an active-duty personnel strength of 837,000 officers, warrant officers, and enlisted persons, exclusive of such 1-year enlisted volunteers for training as are authorized by Congress, officer candidates, personnel of the Reserve components on active duty for training purposes only, persons paid under the appropriations for the National Guard and Organized Reserve Corps, and personnel and units of the Reserve components ordered to active duty in an emergency hereafter declared.

(b) Of the active-duty personnel strength authorized in subsection (a) of this section, not to exceed 40,000 may be active-list commissioned officers of the Regular Army exclusive of the numbers authorized by law for the Army Nurse Corps and the Women's Medical Specialist Corps; and 9,000 may be active-list warrant officers of the Regular Army. Section 501 of the Officer Personnel Act of 1947 (61 Stat. 883) is hereby amended by striking out the words "fifty-one thousand" and inserting in lieu thereof the words "forty thousand"; and hereafter the active-list commissioned officer strength authorized in said section shall apply to the Regular Army, exclusive of the United States Air Force.

(c) There is hereby authorized for the National Guard of the United States a personnel strength, to be distributed among the several States, Territories, and the District of Columbia of 750,000 officers, warrant officers, and enlisted persons,

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excluding those serving on active duty in the Army of the United States that are counted within the personnel strength of 837,000 authorized in subsection (a) of this section.

(d) There is hereby authorized for the Organized Reserve Corps a personnel strength of 980,000 officers, warrant officers, and enlisted persons excluding those serving on active duty in the Army of the United States that are counted within the personnel strength of 837,000 authorized in subsection (a) of this section. Persons may be appointed as warrant officers in the Officers Reserve Corps under such regulations and in such numbers as the Secretary of the Army may prescribe.

Mr. JOHNSON. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Johnson of California.

Mr. JOHNSON. General Bradley, I didn't notice yesterday, but I notice this morning, that you provide for 9,000 warrant officers in addition to the regular commissioned officers. Isn't that a pretty high ratio: 9 to 40. You have 40,000 commissioned officers and 9,000 additional warrant officers.

General BRADLEY. No, sir; I don't think so. And there was no intention of trying to work up a ratio between those two. The 9,000 is based on a job analysis of the jobs we think could be handled by warrant officers, thus relieving officers for more general duty. We didn't try to work it out on a percentage basis, but on a job analysis throughout the Army.

Mr. JOHNSON. You mentioned yesterday that the Army is getting more and more special jobs. Those kind of jobs are the ones you have in mind for these warrant officers?

General BRADLEY. Yes, sir.

Mr. JOHNSON. I thought there was a sort of ratio heretofore, a general ratio between the number of warrant officers and the officer strength?

General BRADLEY. I believe the warrant officer number was based on a percentage of the enlisted strength and not of the officer strength.

Mr. JOHNSON. What was the percentage?

General DAHLQUIST. One and a half percent of the enlisted strength.

Mr. JOHNSON. Could be warrant officers?

General DAHLQUIST. Warrant officers.

Mr. COLE. Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. The headlines of one of the local papers this morning stated that General Bradley had recommended an increase in the authorized personnel of the Department of the Army. I am satisfied in my own mind that this bill does not authorize any increase in personnel with respect to the 837,000 Regulars, and to that extent the headlines were in error.

Now, what I would like further to know is to what extent the authority under paragraph (c), with respect to the National Guard which authorizes 750,000 officers, warrant officers, and enlisted personnel, increases present statutory authority, if any?

General BRADLEY. I will take up the two points in turn. Certainly we know that the 837,000 is not an increase over what is already authorized by last year's Selective Service Act. If you are referring to the same article I saw by Mr. Norris——

Mr. COLE. Yes.

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General BRADLEY. The headline does not quite correspond to what he wrote.

Mr. COLE. That is correct.

General BRADLEY. The reporter is very accurate, but maybe somebody else wrote the headline.

We did not ask for any increase in the authorized strength of the Regular Establishment.

The National Guard present authorization, as I understand it, is 500 men per Congressman—that is, for each congressional district; put it that way.

Mr. COLE. General Dahlquist, what is it——

General BRADLEY. Eight hundred for each congressional district.

General DAHLQUIST. I think it is 800 men for each congressional district.

Mr. COLE. Who is quick on figures? Let us have in the record what that amounts to; 348,000?

General DAHLQUIST. It is 800 per Congressman and delegate.

Mr. COLE. Can you tell us how many that aggregates?

General DAHLQUIST. About 400,000.

General CRAMER. Mr. Chairman, the answer to that is found in the National Defense Act of 1920, as amended——

The CHAIRMAN. One minute. Come around here, please, sir, and give your name to the reporter if you want to make a statement. We don't know exactly who you are back there, except you are highly decorated.

General CRAMER. General Cramer, Chief of the National Guard Bureau.

The CHAIRMAN. Now, what is it, General?

General CRAMER. The authorized strength of the National Guard is found in the National Defense Act of 1920, as amended, and is stated to be 425,000 enlisted personnel.

Mr. COLE. 425,000, roughly?

General CRAMER. Yes, sir.

Mr. COLE. Then, this bill does amount to an increase of 325,000 authorized for the National Guard?

General CRAMER. That is in accordance with the authorization contained in the National Defense Act. The guard is presently organizing under the approved policies with respect to the postwar National Guard and Reserve, as approved by the then Secretary of War on October 13, 1945, and the troop basis prepared by the War Department General Staff to implement the approved policies, which created an over-all troop basis of 682,000 as a result of those policies——

Mr. COLE. All right.

General CRAMER. That is Army and Air National Guard.

Mr. COLE. Then drop down to subparagraph (c), General, and tell me to what extent this bill authorizes increases for the Organized Reserve Corps?

General BRADLEY. As I understand it, there is no limit at the present time in the Organized Reserve Corps. The number of people participating on an active-duty status has been controlled by legislation and by the desire of the Reserve officers themselves to stay abreast of training.

Mr. COLE. And heretofore there has been no ceiling on the inactive Reserve Corps?

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General BRADLEY. That is my understanding.

Mr. COLE. The Organized Reserve Corps on inactive duty.

General BRADLEY. Yes, sir.

Mr. COLE. Mr. Chairman, it seems to me if it is true, as it appears to be, that this bill authorizes a 60-percent increase in the authorized strength of the National Guard, there should be some explanation in justification of it, either by General Bradley or somebody else.

General BRADLEY. If you will remember, the authorized strength of the Regular Army under the National Defense Act was approximately 280,000. We do not believe that that meets modern conditions. Neither do we believe that the authorized strength of 425,000 for the National Guard meets the requirements of the present world conditions and our position of leadership in it. We believe that that would be too restrictive for mobilization purposes, without having to come to you again for further authorization upon the happening of even minor emergency which might cause us to increase forces. We believe both of those figures are outdated by present conditions.

Mr. COLE. The 425,000, or 450,000 ceiling now existing for the National Guard was established by the Defense Act of 1920, do I understand?

General BRADLEY. As amended, yes. I don't remember when the last amendment to that was.

Do you know, General Cramer?

General CRAMER. The original strength was included in the 1920 act.

Mr. COLE. When was the 425,000, or 450,000 ceiling enacted?

General CRAMER. That was enacted in 1920—425,000 enlisted men.

Mr. COLE. What was the statutory strength of the Army in 1920?

General BRADLEY. The authorized strength in the National Defense Act was 280,000, sir.

Mr. COLE. 280,000 for the Regulars?

General BRADLEY. Yes, sir.

Mr. COLE. And 425,000, or 450,000, for the National Guard?

General BRADLEY. Yes, sir.

Mr. COLE. So the increase now requested for the National Guard, from 450,000 to 780,000, is substantially less than the proportionate increase heretofore established for the Regular Army up to 837,000?

General BRADLEY. Yes; percentagewise, it is less.

The CHAIRMAN. General Dahlquist, will you come around, please, sir. I want to ask you a few questions.

Mr. HÉBERT. Mr. Chairman, before he leaves the subject of the raising of the National Guard.

The CHAIRMAN. The gentleman from Louisiana.

Mr. HÉBERT. General, wasn't it necessary to place a ceiling on the National Guard enlistments at the time of the enactment of the draft law?

General BRADLEY. Yes; because of the amount of appropriations we had for this fiscal year.

Mr. HÉBERT. That was the only necessity for the ceiling. You had enough personnel authorized to take care of those who wished to enlist in the National Guard?

General BRADLEY. Yes.

Mr. HÉBERT. Now, what is your opinion on the present ruling that anybody enlisting in the National Guard now should be exempt from

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the draft? Will that demand a further increase in the ceiling of your personnel in the National Guard?

General BRADLEY. We expect to get—put it this way: We hope to get appropriations for an increase in the National Guard for 1950.

But that is a rather difficult question to answer; just how much effect the possibility of a draft has upon a man enlisting in the National Guard.

Mr. HÉBERT. Well, of course, the increase in the National Guard enlistment occurs when the exemption is granted to a prospective draftee. Would your opinion be that that figure of 750,000 would be saturated or absorbed if you receive appropriations to sustain such a National Guard?

General BRADLEY. I doubt very much whether you could ever reach that figure under present conditions. And we had no intention of asking for funds for that much of an increase.

Mr. HÉBERT. You doubt if they would reach that figure in spite of the fact that such people would be exempt from the draft if they enlisted in the National Guard?

General BRADLEY. Yes, sir; I doubt that.

Mr. HÉBERT. There would still be some who would prefer to be drafted than go into the National Guard?

General BRADLEY. They would be willing to take their chances, certainly.

Mr. HÉBERT. That is what I mean.

Mr. BROOKS. May I ask a question?

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. In increasing these figures, would we be able to get the States interested in proceeding to increase the Guard in the local States to the point of taking up the personnel that we want them to take up?

General BRADLEY. I am not quite sure I get the import of your question.

Mr. BROOKS. Well, naturally the States make a contribution to the Guard.

Let me ask you this question: Will the several States be interested in building the Guard to the size that you want it increased?

General BRADLEY. I believe General Dahlquist can probably answer that question better than I can because he has been a little closer to that particular point.

Mr. BROOKS. He is an old guardsman himself and I am sure he knows about that.

General DAHLQUIST. Actually, this does not provide for any more units than we now have, that the States already have accepted. The acceptance, as I understand it, by the States of the present troop basis was predicated on two assumptions: One was that they would have help in recruiting, if necessary, and that they would get substantial help in the building of facilities because I doubt that the States have accepted the present troop basis under the assumption that they are going to furnish the funds for the armories and storage facilities.

Mr. BROOKS. Don't you have complaints now from some of the States that the Guard is as large as they want it to be?

General DAHLQUIST. I personally do not know of any. General Cramer, who is Chief of the National Guard Bureau, would have

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the answer on that, as to whether States are objecting to the present allocation, or not.

Mr. BROOKS. Well, it would be natural to expect them to say that a certain strength would be sufficient for their own needs; wouldn't it?

General DAHLQUIST. I don't believe the present troop basis is on a State need. I believe it is far in excess of what the States need for their own purposes.

Mr. BROOKS. Well, the present troop basis for the Guard is above, you say, the statutory limitation.

General DAHLQUIST. The statutory limitation is not on the number of troops but on the number of men. For instance, we could have with the present authorization of men the same number of troops that are now allocated, but the companies would be smaller, the regiments would be smaller, and the divisions would be smaller.

Mr. BROOKS. Well, isn't your personnel above the statutory limitation now?

General DAHLQUIST. No, sir.

Mr. BROOKS. I thought that General Bradley just said it was 440,000.

General DAHLQUIST. That is the statutory limitation. The number of men we have is under 350,000.

Mr. BROOKS. Oh, it is?

General DAHLQUIST. Yes, sir.

Mr. BROOKS. You are still well below that limit.

Mr. JOHNSON. Mr. Chairman.

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. What was the exact strength of the active National Guard at the end of last year—December 31, 1948?

General DAHLQUIST. I think General Cramer can answer that.

General CRAMER. I can give you the figures, sir, as of January 15: Between 317,000 and 318,000 officers and warrant officers and enlisted men in the Army National Guard and the Air National Guard.

Mr. JOHNSON. Well, is there any contemplated expansion in any of the States of that number?

General CRAMER. Yes, sir. The limitations fixed by the budget for the fiscal year 1949 imposed a limitation on the Army National Guard of 300,000 and on the Air National Guard of 41,000. It is anticipated that those figures will be reached.

Mr. JOHNSON. I want to say right here, General Cramer, last spring I had a little communication with General Bradley about the National Guard in my State of California, and in that communication I criticized an officer. And somebody that read that felt that I was aiming at you. I wasn't thinking of you at all.

In fact, I want to say for the record that my people in my State, including The Adjutant General, think you are the best one we have ever had on the job.

General CRAMER. Thank you, sir.

The CHAIRMAN. Now, General Dahlquist, this question will be asked on the floor, and this is for information, and the record: What is the strength of the Army today? Is it 682,000?

General DAHLQUIST. The last strength figure I had was 682,000 officers and men.

The CHAIRMAN. And the budget put a limitation on the strength of about 677,000?

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General DAHLQUIST. We must enter next fiscal year with a strength of 677,000.

The CHAIRMAN. Now, with an Army of either 682,000 or 677,000, what is the total number of officers you have? Is it 72,936?

General DAHLQUIST. I got the figure here. I am sorry I don't remember. That is approximately correct.

Mr. COLE. Mr. Chairman, I suggest when you discuss the figures that you are now discussing you make certain that you mean Regulars or Regulars including Reserves.

The CHAIRMAN. We will do that.

Now, on active duty, how many officers have you today? Is it 72,936?

Well, anyway, that is what you furnished me.

General DAHLQUIST. I have the exact figures. That is approximately correct.

The CHAIRMAN. There were a series of questions sent to the Department. And this is merely for the record. These questions will be asked and I want to be in a position to advise the House if anyone asks me.

One of them is this: Give the number of officers in each grade, permanent and temporary. In the Regular Army, you furnished me the information that there are 22,018 officers; called to active duty was 50,918, which I assume would be Reserve officers—making a total of 72,936. That is approximately correct, isn't it?

General DAHLQUIST. Yes, sir.

The CHAIRMAN. Good.

I will put in the record the break-down, in grades.

(The break-down, in grades, is as follows:)

U. S. Army officer command strength, by grade in which serving, Nov. 30, 1948

Grade	Male commissioned and WAC		Nurses and WMSC
Commissioned officers	67,778	(1,472)	4,382
General of the Army	2	(0)	0
General	7	(0)	0
Lieutenant general	25	(2)	0
Major general	151	(8)	0
Brigadier general	191	(4)	0
Colonel	3,265	(113)	2
Lieutenant colonel	8,186	(197)	36
Major	11,111	(287)	133
Captain	21,146	(427)	1,104
First lieutenant	20,295	(430)	2,726
Second lieutenant	3,399	(4)	381
Warrant officers	3,187	(24)	.....
Chief warrant officer	1,808	(12)	.....
Warrant officer (junior grade)	1,379	(12)	.....

NOTE.—Figures in parentheses represent Air Force personnel.

The CHAIRMAN. Now, I would like to get this information for the record:

Give the number of civilian employees in the Department of the Army. You answered there were 13,835 civilian employees assigned to the Department of the Army in Washington, D. C., as of November 1, 1948.

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Give the number of civilian employees of the Army in the United States. You answered 305,465 civilian employees were assigned to the Department of the Army in the United States as of November 1, 1948.

Now, are there any other questions on the proposed amendment to section 102 by any of the members of the committee?

Mr. KILDAY. May I ask this question.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. General Bradley, I notice that in the bill the Army title of the bill includes the Reserve and National Guard. The Air Force title of the bill does not refer to the Reserve and National Guard. The bill is primarily to fix the strength of the Regular forces. Can you explain to me now why the Army has included the limitations on the strength of the National Guard and the Reserve in the bill?

General BRADLEY. Well, we believe we should have some figure for planning purposes. You had an authorization, for example, for the National Guard in the old National Defense Act. It apparently was thought necessary. This will remove any doubt, if we put in the authorized strength of the National Guard, so that we can use that figure for planning purposes. In other words, you might think that you still had to stick to the old 425,000 provided in the old Defense Act.

Mr. KILDAY. This is to act as a revision of the old 425,000 authorization of the Defense Act. But there was no limitation on the Reserve and now you bring in a limitation on the Reserve. Could you tell us why you now feel it is necessary to put a limitation on the Reserve?

General BRADLEY. I don't suppose there is any great necessity for it, but we believe that it is in accordance with good planning. Since we have an authorized strength for the other two we should have some figure for planning purposes for the Reserve also.

Mr. KILDAY. Of course, this contemplates only a ceiling whereas at the present time there is no ceiling.

General BRADLEY. That is correct.

Mr. KILDAY. I notice for the first time this bill proposes to grant authority for warrant officers in the Reserve. There has been no such authority in the past, as I understand it.

General BRADLEY. That is correct. We thought they should be placed on the same basis and footing as the Regular Army and National Guard.

Mr. KILDAY. And then if this bill is passed you propose to go ahead with the Reserve warrant officer program?

General BRADLEY. Yes, sir.

Mr. HÉBERT. Mr. Chairman, may I just get one thing clear in my mind.

The CHAIRMAN. Mr. Hébert.

Mr. HÉBERT. General Bradley, as I understood you a moment ago, in connection with the ceiling placed on the National Guard of 750,000, as contrasted to the enforcement of the draft law, the situation as it confronts us now would be that the 750,000 ceiling would be enough to absorb any individual who is subject to the draft and desired to join the National Guard in order to avoid being drafted. So it brings us for all intents and purposes to the fact that the draft means that only those who will allow themselves to be drafted will be drafted; is that correct?

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General BRADLEY. No, sir.

Mr. HÉBERT. Well, as I understand it now, your draft is suspended, I think for 2 months; isn't it?

General BRADLEY. That is correct.

Mr. HÉBERT. Also, you have a ruling now that if an individual who is subject to the draft joins the National Guard he then is exempt from the draft.

The CHAIRMAN. They would have to do it within a certain length of time.

Mr. HÉBERT. No, sir; they just revised that, Mr. Chairman.

General DAHLQUIST. The selective-service law provided that anybody who was in the guard on the date of enactment of the act, regardless of his age or any other condition, was exempt from calling under the draft.

The act further provided when any governor says he is unable to maintain the strength of his guard by voluntary enlistment of men who are eligible he could then enlist men below the age of 18 years and 6 months, and they would be deferred from induction so long as they stayed in the guard.

Mr. HÉBERT. Yes.

General DAHLQUIST. There is nothing in the Selective Service Act which prevents men joining the guard. But men who were not deferrable under other provisions of the law, when their number came up and if men were being inducted, and who enlisted after enactment of the act, would have been inducted.

But, of course, there are several millions of veterans who are not subject to the draft. Men who have families are not subject to the draft.

Mr. HÉBERT. General, within the last several weeks the order was issued that any individual who joined the guard, despite the fact that he joined after the day of enactment of the draft law, would be exempt from the draft. I think that is the practice in force right now, if I am not mistaken.

I am trying to arrive at that conclusion, that the draft law for all intents and purposes is dead.

General DAHLQUIST. I am not acquainted with the order you are talking about. Perhaps General Cramer is.

The CHAIRMAN. Come around, General.

Mr. HÉBERT. That is the one thing I am trying to arrive at. For all intents and purposes there is no draft right now, except on the books.

General CRAMER. The gentleman, in my opinion, Mr. Chairman, is correct, on a ruling by the Director of Selective Service.

Mr. HÉBERT. So for all intents and purposes the draft is dead, except being on the books.

General BRADLEY. No, sir; we wouldn't agree to that statement.

Mr. HÉBERT. But you are not drafting anybody, General.

General BRADLEY. No, sir; but if we fall below strength and can't get them by voluntary means, then we would have to issue another call.

Mr. HÉBERT. Then you would revoke the present existing ruling of the Selective Service Director.

General BRADLEY. Not necessarily so.

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General DAHLQUIST. There has been no order that we issued. Selective Service may have issued a ruling, which he may revoke at some future time.

Mr. HÉBERT. All right.

General DAHLQUIST. We have no control over the administration of the law.

Mr. HÉBERT. In other words, you give your quota to the Selective Service Director, and he has to fill it.

General DAHLQUIST. That is correct.

Mr. HÉBERT. And it is within his province to issue whatever rulings he desires. But he must keep within the number required.

General DAHLQUIST. And he must keep within the provisions of the law also.

Mr. HÉBERT. Naturally. I understand that.

Mr. KILDAY. How many governors have taken advantage of that provision, that they could issue that certificate? Have any exercised it?

General CRAMER. When I checked the figures some time ago it was in the thirties. Then when we lifted the ceiling on recruiting in the National Guard, on the 23d day of November, several other governors took advantage of the provision to which General Dahlquist has made reference. So I should say it is in effect at least in two-thirds of the States, and probably more.

I can give you the exact number, if you would like that figure.

The CHAIRMAN. Members of the committee, is there any objection to agreeing to the proposed amendment as submitted by the Department of the Army to section 102?

If not——

Mr. COLE. None, except that I have a little amendment that I discussed with the general yesterday, and to which he had no objection.

The CHAIRMAN. All right.

Mr. COLE. And that is, at the bottom of page 3, in section 102 (a), where you refer to—

one-year enlisted volunteers for training as are authorized by Congress—

to change that to read—

one year enlistees as are or may be authorized by law.

The CHAIRMAN. What is your comment, General Bradley, in reference to the amendment by the gentleman from New York, Mr. Cole?

General BRADLEY. May I get that a little bit more accurately?

Mr. COLE. After the words "one year"——

General BRADLEY (reading):

Exclusive of such one year——

Mr. COLE (reading):

one-year enlistees as are or may be authorized by law.

General BRADLEY. That is all right with us.

The CHAIRMAN. Without objection, Mr. Cole's amendment is agreed to, and, without objection, section 102, as amended and proposed by the Department.

Now, we will take section 103, General.

Let the staff representative read section 103. Mr. Blandford.

Mr. BLANDFORD. Yes, sir.

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The proposed amendment to section 103, is as follows [reading]:

SEC. 103. The Secretary of the Army is hereby authorized to procure the materials and facilities, including guided missiles, necessary for the maintenance and support of the Army of the United States and its organizations and installations, including but not limited to: (1) the supply of modern standard items of equipment; (2) the replacement of equipment as it becomes obsolete or unserviceable; (3) the provision of necessary spares and spare parts; and (4) the maintenance of such reserves of supplies and equipment as are necessary for the Army to perform its mission.

The CHAIRMAN. Now, General, any comments you want to make with regard to the proposed amendment to section 103?

General BRADLEY. I might say in its present form section 103 provides for the modernized equipment for six divisions each year. That was the way it was originally printed.

This program had been considered essential for the maintenance of modern equipment both for the Regular Army and its Reserve components. It is part of the authority required by the Army for the procurement and supply of equipment and facilities necessary to the accomplishment of its mission.

However, because this requirement for six annual sets of division equipment was based upon the authorized strength of the Army rather than the strength actually provided for in annual budgets, we would recommend elimination of this provision.

As a result, the revised section 103 proposes only generally and in broad flexible terms for the initial supply, replacement, maintenance, and reserves of materials and facilities for the Army to be appropriated by the Congress in any fiscal year. In other words, we have eliminated what might have been an onerous tax burden to be carried from year to year.

And we believe that the section in these general terms is better than putting it in the specific terms as it was originally printed.

The CHAIRMAN. Any questions from any members of the committee on the proposed amendment to section 103?

Mr. ELSTON. Mr. Chairman.

The CHAIRMAN. Mr. Elston, of Ohio.

Mr. ELSTON. General, I am wondering why you include guided missiles and do not refer to atomic weapons?

General BRADLEY. Well, we do not enter into the procurement of atomic weapons. That is controlled and done by the Atomic Energy Commission.

Mr. ELSTON. Yes, I understand; but the Army can request them.

General BRADLEY. In case of an emergency, whichever service was going to use them would then get authority from higher authority than ourselves for their use, and then they would be turned over to that service for use. That would apply to any one of the three services.

Mr. ELSTON. You think this section is sufficiently broad to cover the procurement of atomic weapons without specifically referring to them, since you have specifically referred to guided missiles.

General BRADLEY. I think it is sufficiently broad because even in case of an emergency the procurement of the atomic weapons would still be by the Atomic Energy Commission and be turned over to us for use.

The CHAIRMAN. This is the first time any direct authorization has been written in the law relating to guided missiles; is it not?

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General BRADLEY. That is correct.

The CHAIRMAN. It gives it a separate positive place in appropriations.

General BRADLEY. Yes, sir.

Mr. COLE. Mr. Chairman—if the gentleman will yield on the point which he has raised, which I think is very important.

Mr. ELSTON. Yes.

Mr. COLE. Would this language permit you to obtain all the facilities necessary for the use of the atomic weapon but not including the weapon itself?

General BRADLEY. I think it does. In its broad terms it says:

*** * * is hereby authorized to procure the materials and facilities, including guided missiles, necessary for the maintenance and support of the Army of the United States and its organizations and installations, including but not limited to—**

four items.

Mr. COLE. I suggest you have your staff give some thought to that question, and if there is any doubt in your mind that that be clarified by appropriate language later on.

General BRADLEY. Yes, sir. We thought it was inclusive, but if there is any question about it we will restudy it and see whether or not it should have the wording changed.

The CHAIRMAN. Any questions——

Mr. JOHNSON. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. General Bradley, directing your attention to subdivision (4) of that section, it reads as follows:

the maintenance of such reserves of supplies and equipment as are necessary for the Army to perform its mission.

I wish you would elaborate on that a little bit and tell us what you had in mind.

What I am thinking of is this: Does that include stock piling or is that only the reserve you want for the various units?

General BRADLEY. This does not apply to stock piling of strategic materials.

We had left over from the war varying amounts of equipment of various types. We would like to rehabilitate that and store it and maintain it for future use either by units or as a reserve material for units that happen to be in combat.

Mr. JOHNSON. This doesn't affect the Stock-piling Act that we passed here several years ago in any way?

General BRADLEY. This does not apply to stock piles.

Mr. JOHNSON. All right.

Mr. VAN ZANDT. Mr. Chairman.

The CHAIRMAN. Mr. Van Zandt.

Mr. VAN ZANDT. General, does this give you any authority to dispose of this obsolete and unserviceable equipment?

General BRADLEY. This does not. That already exists by law.

Mr. VAN ZANDT. In other words, it does not change the existing law.

General BRADLEY. No, sir.

Mr. VAN ZANDT. The main purpose, as I understand it, of this section is to make it beyond any question of a doubt that the Appropriations Committee has specific authority to make various appropriations

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with reference to that matériel and they would not be subject to a point of order.

General BRADLEY. That is our understanding.

The CHAIRMAN. That is right.

Mr. ELSTON. One more question, Mr. Chairman.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. Do you think it can be construed to include the acquisition of real estate?

General BRADLEY. I should think the word "facilities" there would include that.

Mr. ELSTON. Then, would it include the disposition of real estate?

As I understand it now, the Army comes in, if they have some real estate to dispose of, or if they have to grant an easement over real estate, and have to request specific authority from Congress. Do you think that might dispense with the necessity of requesting that authority in the future?

General BRADLEY. I will let General Reeder answer that question, if I may.

General REEDER. We are requesting separate and distinct legislation to cover the disposal of real estate.

As to easements, we do have authority, in the Secretary of War, to grant easements.

We do not have any general authority to dispose of real estate when it is no longer needed, or to exchange real estate except by specific authorization of Congress.

Mr. ELSTON. I understand, then, you are going to ask for that in some subsequent bill?

General REEDER. Yes, sir.

The CHAIRMAN. Now, any other questions on the amendment to section 103?

If not, section 103, as amended, is agreed to by the committee.

Now, go to section 104. I will let the staff representative read it.

Mr. BLANDFORD. Section 104: Research and development authorization, has not been amended by the Army and the original bill remains the same. [Reading:]

The Secretary of the Army is hereby authorized to conduct, engage, and participate in research and development programs related to activities of the Army of the United States and to procure or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs.

The CHAIRMAN. Well, I am glad to note that out of four sections that were drafted by the Armed Services Committee we were able to get one without it being rewritten. We did pretty well.

Any objection to agreeing to section 104?

Mr. COLE. I have a question, Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. I want to raise this question with regard to the authority given to the Department of the Army with respect to research. To what extent does this section nullify the authority and responsibility given to the Research and Development Board by the National Military Act of 1947?

General BRADLEY. It does not affect theirs at all. It merely authorizes the Army to carry on research projects. As a matter of fact, at the present time, there is no specific statutory authority for these activities.

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Mr. COLE. Well, would there be any objection to putting a limitation in section 104 to the extent that the Secretary's authority with respect to research, which in my opinion is necessary and proper, be exercised in accordance and under the provisions of the National Military Establishment Act of 1947?

General BRADLEY. It might lead to difficulties if you did put restrictions in it.

I assure you that all of these research programs are coordinated now and watched over by the Research and Development Board.

Mr. COLE. Yes, but you see we have this situation: The Congress, and with the approval of the President, enacted into law a special agency which was charged with the responsibility of coordinating the research that was done by the military departments of the Military Establishment.

Now, if the Congress subsequent to the enactment of that law gives specific authority to one of the departments with respect to research, it could be very properly argued that that nullified the authority of the Research and Development Board with respect to that particular department.

The CHAIRMAN. Why not put it in cooperation with the Research Board?

Mr. COLE. That is what I have in mind.

The CHAIRMAN. Don't exclude, just put it in cooperation with them.

General BRADLEY. Well, section 302, which follows, is a saving provision which I think would eliminate your objection on that, sir.

The CHAIRMAN. Well, when we get to section 302 there will be a good deal of discussion about that, because I think that goes further than we probably want to go.

I think the suggestion made by the gentleman from New York, Mr. Cole, is to have it in cooperation with the Research Board as set up in the National Security Act.

It might be interpreted, as written in section 104, as being separate and independent. I think it ought to be in cooperation with the Research Board as set up in the National Security Act.

General BRADLEY. It is all right with us.

The CHAIRMAN. Let the staff, then, if there is no objection, prepare an amendment to the effect that the Secretary of the Army, in cooperation with the Research Board, as provided for in this National Defense Act, can conduct, engage, and participate in research.

Mr. COLE. Mr. Chairman, I suggest it read substantially as follows:

Subject to the provisions of section 214 of the National Security Act of 1947, the Secretary of the Army is hereby authorized to conduct—

and so on.

The CHAIRMAN. It is all right.

General BRADLEY. It is all right with us, sir.

The CHAIRMAN. Without objection, the amendment is agreed to.

Now, members of the committee, that finishes all the sections relating to the Army—wait.

Without objection, the amendments agreed to on the Army section of the bill are agreed to.

Now, General Bradley——

Mr. COLE. Does that include section 105?

The CHAIRMAN. No. These others relate to the Air Force, except section 302, which is over-all.

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Mr. COLE. There is a new section 105 that the Army is proposing.

The CHAIRMAN. Oh, yes. Read this section 105.

Mr. BLANDFORD (reading):

SEC. 105. There are hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums of money as may be necessary to carry out the purposes of this title. Except as may otherwise be provided in the appropriation act concerned (1) any moneys appropriated to carry out the purposes of section 103 of this Act shall remain available for obligation during the fiscal year for which appropriated, and for the succeeding fiscal year, and shall remain available for expenditure for a total of five years; and (2) any moneys appropriated to carry out the purposes of section 104 shall remain available until expended.

Mr. KILDAY. I just wanted to know whether there has been any study given to the constitutional question involved there as to appropriations for the Army in excess of a period of 2 years?

General REEDER. Yes, sir; there has. I can't quote the opinions of the Attorney General, but the substance is that in the constitutional limitation the gear and material to equip an army and operate it is not included. The language of the Constitution says—

* * * to raise and support the Army—

and that has been held and is held to mean that Congress can by its action limit the Army within that 2-year provision by the pay and the appurtenances of the individuals.

The CHAIRMAN. Of course, this has more application to a program for the Air Force than it would to the Army because the Army would hardly engage in a procurement program for as long a period as 5 years in reference to tanks and artillery and small arms. They can be manufactured with such rapidity that they can probably be made within a period of 2 years. But it would have direct bearing upon an orderly procurement program with reference to aviation. That is the reason for it. It refers to both departments.

Mr. KILDAY. Mr. Chairman, I agree with the general as to the effects of the decision of the Attorney General and the Adjutant General. It does not apply to equipment but to pay and subsistence of the armed services.

But I think we ought to put it in the hearings, because the question is likely to arise.

The CHAIRMAN. Put the opinions in the hearing.

General REEDER. We will get those opinions.

(The opinions are as follows:)

DEPARTMENT OF THE ARMY, LOGISTICS DIVISION,
GENERAL STAFF, UNITED STATES ARMY,
Washington 25, D. C., February 1, 1949.

Memorandum for Chief, Legislative and Liaison Division.
Subject: Army and Air Force Act of 1949.

Reference our telephone conversation of this date concerning questions with respect to the Army and Air Force Act of 1949, the following is furnished:

Question. Does section 103 cover atomic weapons? Answer. Subject to the provisions of other laws, now in existence or that may be enacted, it is believed that section 103 covers atomic weapons.

Question. Are the provisions of section 105 in conflict with article I, section 8, clause 12, of the Constitution? Answer. An opinion of the Attorney General on January 2, 1904 (vol. 25, Opinions of the Attorney General, p. 105) states that: "The inhibition of article I, section 8, clause 12 of the Constitution is confined to appropriations to raise and support armies in the strict sense of the word 'support,' and does not extend to appropriations for the various means which

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an army may use in military operations, or which are deemed necessary for common defense."

In an opinion of January 8, 1948, the Attorney General ruled that "There appears to be no legal objection to a request to the Congress to appropriate funds to the Air Force for the procurement of aircraft and aeronautical equipment to remain available until expended" (vol. 40, Op. No. 132). This opinion was based upon the previous opinion rendered by Solicitor General Hoyt on January 2, 1904 (25 Op. No. 105).

Question. Has that portion of section 105 which states "Except as may otherwise be provided in the appropriation act concerned" been checked with the Comptroller General? Answer. Yes. The Comptroller General has stated that in the absence of specific provisions in appropriation legislation, the language contained in the authorization legislation will apply.

W. O. REEDER,
Major General, GSC,
Deputy Director for Commands and Services, Logistics Division.

Mr. COLE. Mr. Chairman, in my opinion, the final sentence of that section shouldn't be in the bill at all because it is an invasion by this committee of a field over which we have no jurisdiction whatever. And that fact is set forth in the language itself. It says:

* * * except as may otherwise be provided in the Appropriations Act concerned.

Except as the Appropriations Committee recommendation may be adopted by Congress then we say this shall be thus and so, which I feel is something that this committee should be very careful about doing for fear of invading a responsibility and a prerogative of another committee.

The CHAIRMAN. I don't see how that invades the prerogative of the Appropriations Committee. The Appropriations Committee can only make appropriations on a program that has been authorized.

Mr. COLE. All right, then take out that first expression at the beginning of the sentence. Don't admit that the other committee has authority to modify what this committee recommends.

The CHAIRMAN. You may be on sound ground with reference to that.

Of course, the legislative authority is what the Appropriations Committee is guided by and if the legislative authority is that it is the intent of the Congress to make appropriations over a period of time, then they so write their bill in accordance with that legislative authority.

Mr. ELSTON. Mr. Chairman, on that point, as I understand it, this is not absolute authority, but it simply authorizes the Appropriations Committee, if they see fit to do so——

The CHAIRMAN. That is right, exactly.

Mr. ELSTON. To make the appropriation last over a period of 2 to 5 years.

The CHAIRMAN. That is right.

Mr. ELSTON. In other words, the Appropriations Committee would have the complete and absolute authority to say whether or not the provisions of this proposed section 105 shall prevail.

The CHAIRMAN. That is right.

Mr. COLE. You mean the Appropriations Committee would not have authority to grant this extension of time for the spending of the money without this authorization?

Mr. ELSTON. That is right. If they didn't have this authorization they couldn't do it.

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The CHAIRMAN. That is right. Otherwise, they couldn't lay down an orderly building program.

As a matter of fact, in the ship construction program this same principle has always applied, and it should apply in reference to this act because this act deals with both the Army and the Air Force.

Any questions now from the staff on any section of the bill?

Mr. BLANDFORD. Yes, sir.

General, in the event that the Appropriations Committee does not otherwise specify how you may spend your money, of what force and effect would this language have in law as far as the Comptroller General is concerned? Supposing the Appropriations Committee does not insert any language indicating how you may spend this money over a long period of time?

General REEDER. Then this would apply.

Mr. BLANDFORD. Do you believe this would have any force and effect, as far as the Comptroller General is concerned?

General REEDER. That is right, sir. The statement is, "Except as may be otherwise provided."

Mr. BLANDFORD. That is a negative approach. In other words, if the Appropriations Committee does not say for how long that appropriation will be available, does this take the place of that language? You are sure of that, as far as these decisions of the Comptroller General are concerned?

General REEDER. No, not positive.

General BRADLEY. We haven't asked for an opinion on it, but the lawyers helped to write it.

Mr. BLANDFORD. I am raising this because it may come up on the floor.

Mr. ELSTON. Would the gentleman yield there?

Mr. BLANDFORD. Yes, sir.

Mr. ELSTON. I am wondering whether the use of the word "shall" makes it mandatory that it be carried over for a total of 5 years, since the word "shall" in law is of a mandatory nature much more so than the word "may."

General REEDER. Yes, sir. That is the feeling I have. It is that this language applies except when the committee dictates otherwise.

General BRADLEY. You will notice that this provision is slightly different from the one the Air Force will want, because our problems, as you say, are not quite the same.

The CHAIRMAN. That is right.

General BRADLEY. We would like to have, however, the authority to obligate these funds during that fiscal year, and the next one, because we are quite often in a position where we have to hurry contracts, and so forth, toward the end of the fiscal year and can't always do the best job. In addition to that, come June 30 we can't spend any money then until the new appropriations act for the following year is passed.

This would help us a great deal in procurement, if we could get it extended into the next fiscal year, although we do not feel that for that purpose we need it extended any more than just the year following the fiscal year for which appropriated.

Ths CHAIRMAN. Now, Mr. Elston, are you offering an amendment to substitute "may" for "shall"?

Mr. ELSTON. No; I think the word "shall" should remain. I simply make the point that since it says "shall remain," it means that it

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does carry for a period of 5 years unless the Appropriations Committee decides otherwise.

The CHAIRMAN. Any objection to incorporating in the bill a new section to be known as section 105?

If not, the amendment as proposed by the Department of the Army is agreed to.

Now, General Bradley, that finishes all of your section of the bill, except section 302, which relates to both Departments. Let the staff read section 302. I would like an explanation of it.

Mr. BLANDFORD. In the amended bill, it will be section 301, Mr. Chairman.

The CHAIRMAN. What?

Mr. BLANDFORD. In the amended bill, it will be section 301.

The CHAIRMAN. The saving provisions.

Mr. BLANDFORD (reading):

Notwithstanding any other provisions of this act, the authorizations herein contained shall be subject to the responsibilities, powers, and duties of the Secretary of Defense and the departments and agencies of the National Military Establishment.

The CHAIRMAN. Now, what does that mean, General? What have you in mind, in putting that in?

General BRADLEY. The idea was to try to put a saving clause in here which would provide that this law or this bill would not upset the present laws pertaining to the duties of the Secretary of Defense.

The CHAIRMAN. Now, where in this bill do you find anything relating, except in this paragraph, to the Secretary of Defense? Or how can it be interpreted that this bill infringes in any way upon the powers given to the Secretary of Defense in the National Security Act, or any authority?

General BRADLEY. We put it in at the request of the Secretary of Defense.

The CHAIRMAN. Yes, sir; there is no doubt about that.

General BRADLEY. I don't know exactly what his reasons were.

The CHAIRMAN. That is what I want to find out. That is probably what happened.

We will save the Secretary of Defense in his own act. We don't want to do it in this act, from my viewpoint, because Congress specifically designated certain powers to the Secretary of Defense. He has only certain limited jurisdiction, and they are enumerated: Nos. 1, 2, 3, and 4.

Now, I don't know what authority this would give him over your establishment.

As you said, it was put in at the behest and request of the Secretary of Defense. We better ask him what was the purpose and objective in having it put in.

General BRADLEY. I am sure he would be better qualified to answer that question than I.

The CHAIRMAN. Yes, sir; I think he will probably be in a better position than you.

Mr. COLE. Mr. Chairman, I suggest that perhaps one of the reasons it was put in is an illustration which I brought the committee's attention to in connection with this research. The committee expressly wrote into the bill that the provisions of the bill we are now consider-

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ing shall be subject to the provisions of the Military Establishment Act of 1947. Well, here is another instance. This bill gives the Secretary of the Army the authority to procure certain materials. Well, I don't think this committee means that the authority of the Secretary of the Army to procure materials should be superior to the coordinating responsibility of the Secretary of Defense.

I think it is for instances such as that that this so-called basing clause was put into the bill, to preserve the present statutory authority that the Secretary of Defense has over all of the departments.

The CHAIRMAN. Well, in view of General Bradley's statement that it was put in at the instance or request of the Secretary of Defense, I think probably he would be the one to make the inquiry about.

Mr. KILDAY. Mr. Chairman, what the gentleman from New York has to say is particularly referable I think to section 202, subsection (3), where the Secretary of Defense is given the power to take appropriate steps to eliminate unnecessary duplication overlapping the field of procurement, supply, transportation, storage, health, and so forth.

But I am just wondering, inasmuch as this fixes the enlisted and officer strength of the Army and the Air Force, what effect this last provision here may have on the power that he had to allocate the officers and enlisted men of the services at the time of the divisions of the Army and the Air Force. Could it be construed as continuing the power of the Secretary of Defense in allocating the numbers of commissioned officers and enlisted personnel of the formerly combined Army and Air Force? If so, we don't want it in here because we are now specifically fixing the strength of each service.

The CHAIRMAN. Well, we will take it up, Mr. Kilday, with Mr. Forrestal. We will call him up here and let him explain it, or someone from his staff to explain it.

Now, members of the committee, this finishes with all sections of the bill relating to the Army. What is the pleasure of the committee as to approval of all sections of the bill, as amended, exclusive of section 302, relating to the Army?

Mr. VAN ZANDT. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. VAN ZANDT. I feel that the sections we are about to approve concern the National Guard. When are we going to give the National Guard an opportunity to have something to say?

The CHAIRMAN. If you had been here when the gavel fell this morning, you would have found the first witness was General Reckord, who approved it for the National Guard. The National Guard, I am glad to say, is in thorough accord with the amendments as now being voted on.

General RECKORD. Mr. Chairman——

Mr. BROOKS. Mr. Chairman, what about the Reserves? Have we heard from the Reserves? I feel before we approve the bill we ought to hear from some member of the Reserves. General Evans is here——

The CHAIRMAN. All right.

I see nothing in the Reserve section except the number.

Mr. BROOKS. That is very important.

The CHAIRMAN. I don't imagine, in view of the generosity as to the number set in the bill, there is any hesitancy on the part of accepting it.

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Now, General, do you want to make a statement?

General RECKORD. Yes, sir.

The CHAIRMAN. Come right around.

General RECKORD. I would like to invite the attention of the chairman to the fact that we agreed to the one section which General Bradley was speaking to at the time. We were very careful to say that we agreed to the language of that section as changed.

Now, if you will permit me the only other suggestion we have to make with respect to the Army side is to clarify the expression "facilities" in section 103, the point being, Mr. Chairman——

The CHAIRMAN. Let us see. Wait one minute, General.

Section 103, in the amendments. Where is it?

Mr. BLANDFORD. Page 7.

The CHAIRMAN. All right.

General RECKORD. We would like to have the committee favorably consider adding the words, after the word "including," "armories and"—those two words—and the reason for that is that the Appropriations Committee does not consider the word "facilities" sufficiently broad to include any assistance in the construction of armories by the States.

The approved War Department policies were based upon the fact that assistance would be given the States in the construction of armories needed to house the additional strength over and above what the States needed.

And last year we thought we had added to the appropriation act for this fiscal year we are now in, I think it was 32½ million dollars. When we attempted to spend that on a basis of 50–50 or 25–75 allocation with the States themselves, we found that the word "facilities" in their opinion did not include armories. And it meant that we have lost 1 year in spending a total of some perhaps $75,000,000 on needed armory construction, the States sitting by with dollars in the banks which cannot be matched by Federal funds because of the fact that that one word is not in the law.

The CHAIRMAN. Then, under this amendment that you propose, as I interpret it, the Appropriations Committee could make appropriation for the establishment of armories.

General RECKORD. Yes, sir.

The CHAIRMAN. Which would be supplemented with State funds.

General RECKORD. State funds.

The CHAIRMAN. Then, it would give absolutely to the Appropriations Committee the authority specifically to designate in what States and what places they would establish the armories.

General RECKORD. Yes, sir.

The CHAIRMAN. Now, of course, General, I am very anxious, and we are all very anxious to have armories, and all that, but money is a little short up here, and the most important thing in my mind is equipment. If we are going to use up all our money to build armories, where are we going to get our equipment?

General RECKORD. Mr. Chairman, by adding these two words you would not add one dollar to the appropriation act. If the money isn't appropriated, we couldn't spend it.

The CHAIRMAN. I know that, of course.

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General RECKORD. Mr. Chairman, the National Defense Act gives the authority for the location of every National Guard unit to the governor of the State.

The CHAIRMAN. Yes; I know that, but it doesn't give opportunity to begin to build armories in all the localities where you have National Guard units.

Of course, you do need armories. We all agree on that.

General RECKORD. Yes, sir.

The CHAIRMAN. You are asking us to confer upon the Appropriations Committee the authority to make specific appropriations for any armory it sees fit in the appropriating meeting.

General RECKORD. No; I am not asking that it be specific like that.

The CHAIRMAN. They will do it in one or two ways: Either leave the discretion with the Department to locate the armories or locate them themselves.

General RECKORD. The way that would work, Mr. Chairman, is that the money appropriated would be allocated by the Department of the Army to the Chief of the National Guard Bureau, and he would deal with the States.

The CHAIRMAN. Thit is right, exactly.

General RECKORD. The States would match the money, and we would get the armory.

In my own little State of Maryland, because of the increased number of units over the number we had previous to World War II, we had to go into 10 different communities. Those units are organized, functioning, and passing their Federal inspections except for their facilities. Their facilities in some instances are disgraceful. It is the same all over the United States.

The State of California is sitting with millions of dollars in the banks and waiting for this authority, so that we can build double the number of armories or maybe three times the number of armories the States can build.

The CHAIRMAN. How many State legislatures have already made specific appropriations and laid down a matching program for armories?

General RECKORD. Mr. Chairman, I don't believe there is a single State that has laid down a maximum program. In my own State of Maryland, I have at the moment——

The CHAIRMAN. I said matching program. In other words——

General RECKORD. On matching program?

The CHAIRMAN. Yes.

General RECKORD. I think quite a few have.

Now, in my own State, we are holding in the bank three-quarters of a million dollars that are not appropriated for matching purposes, but we are holding it for that purpose——

The CHAIRMAN. Well, now, General, I want to be fair with you. I think the only way to proceed is to put the cards on the table. As far as I am concerned, I am thoroughly in accord with the principles.

I think it is a matter that should be separately considered and not tied in with this bill. And, representing your association, if you prepare a bill, I will assure you that we will have a hearing immediately on it. We will go into the whole question and deal with it separately and alone.

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Now, this committee up to date hasn't been furnished with a great many departmental bills, and if we don't sort of look around for a little legislation we will run out of soap. So if you will furnish that, why, we will go to work on it. Let us not try to do everything in one bill. Let us have 2 days in here, instead of 1 day.

General RECKORD. Mr. Chairman, I would like to get into the record, if I may, the fact that 3 years ago this matter was proposed by the War Department. A year and a half ago we all got together on a bill that everybody agreed upon, and the bill isn't down here yet.

The CHAIRMAN. All right; you bring it up here and I will introduce it.

Mr. BROOKS. Mr. Chairman——

The CHAIRMAN. Is that satisfactory now, General?

General RECKORD. Everything is satisfactory that will get us some money.

Mr. VAN ZANDT. Mr. Chairman——

The CHAIRMAN. Wait 1 minute now.

Is it satisfactory for you to have a special, separate hearing on it?

General RECKORD. I am going to do whatever the chairman says.

The CHAIRMAN. I request you to prepare an armory bill for our consideration. We will give you a hearing the day you introduce it.

General RECKORD. But, Mr. Chairman, that puts the Guard in a very embarrassing position.

The CHAIRMAN. Then, we will have the staff to do it. Let the staff prepare the bill, in consultation with the Guard.

General RECKORD. The addition of these two words will solve the problem.

The CHAIRMAN. I am informed there is a bill all ready for us.

Mr. BROOKS. Mr. Chairman, isn't it possible, too, that the bill cover the entire armory program; for instance, a program covering the Guard and the Reserves in all of its phases—the Army Reserves, the Navy Reserves, the Air Force Reserves, and the Organized Reserves, as well as the National Guard—so we can have some order in connection with it?

General RECKORD. We have had a bill that we all agreed to for a year and a half now, and we can't get it pried out of the Pentagon.

The CHAIRMAN. You will get it this time.

Mr. VAN ZANDT. Mr. Chairman, may I ask, Is it not true that we introduced a bill in the Eightieth Congress on the armory question, and the Department took an adverse position on it.

General RECKORD. Yes, sir. Then they changed their minds. We all got together. Now, I am told, within the last 3 or 4 days, that it is tied up in the Bureau of the Budget.

Mr. BATES. General, under what provisions of law did the Naval Reserve armory bill——

General RECKORD. They have authority.

Mr. BATES. I know. Was that a general bill or a special bill?

General RECKORD. No, sir. That was authority that the chairman was instrumental in getting for the Navy when he was chairman of the Naval Affairs Committee.

The CHAIRMAN. We are going to equalize everything up here. Everything we did for the Navy we are going to do now for the Army and Air Force. We will get along all right.

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The CHAIRMAN. Now, General Evans, representing the Organized Reserve.

General EVANS. Mr. Chairman and gentlemen of the committee, I hesitate to interject myself in this situation that has just taken place under the circumstances, but I rose to my feet with the hope that I might bolster up General Reckord's suggestion that the words "armory and" be placed in this particular section.

We are in dire need of some sort of organization that will allow people to consider a temporary construction and the leasing of buildings.

The Reserve is in a much worse shape from that standpoint than the guard. I won't enter into a long discussion on the matter, but I would urgently urge that this committee consider putting in those words.

The CHAIRMAN. All right.

Mr. BROOKS. Do you want General Reckord's bill to include the Reserve?

Mr. EVANS. I most certainly would.

The CHAIRMAN. You are satisfied with the numbers put in this bill?

General EVANS. Yes, I see no objection to that, Mr. Chairman.

The CHAIRMAN. All right.

General EVANS. Of course, the matter of numbers does not make a reserve.

The CHAIRMAN. Oh, I understand that. But you have to have some objective. That is your objective.

You are satisfied with that objective?

General EVANS. I am satisfied.

The CHAIRMAN. Anything further you desire to say with reference to it now?

General EVANS. No, not at this time.

The CHAIRMAN. I assure you, if the committee so directs me, we will have a hearing on the armory bills that are pending before us. I will ask the policy committee whether they want to have it heard before the full committee, or have one of the subcommittees work on it. We will go to work on it right away, because we haven't much grist in the mill.

General EVANS. I should also like to have an opportunity at not too long a time—and at your discretion, of course—to discuss with the committee the question of the Reserve itself, as to its organization, and so forth.

The CHAIRMAN. Yes, sir. There is a good deal of legislation that has been introduced. It has been submitted to the departments for their comments. We will afford that privilege to you, too.

General EVANS. Thank you.

The CHAIRMAN. Now, members of the committee, what is your pleasure with reference to agreeing to this section of the bill as amended by the Department of the Army?

Without objection, that section of the bill is agreed to, excluding section 302.

Now, that brings us down to that portion of the bill known as the Air Force title.

General Bradley, I want to thank you, sir—and your staff as well—for your cooperation.

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Is there any further information you want to give the committee in reference to that portion of the bill relating to your Department?

General BRADLEY. No, sir; except I may try to clear up one point that seemed to be causing trouble yesterday, if I might——

The CHAIRMAN. Well, we have agreed to everything, so it didn't distrub us very much. We agreed to it like you wanted. You can clear it up in the record. That is all. We agreed to it just like you wrote it.

Now, members of the committee, we have reached that part of the bill which is title II, covering the Air Force. It is now 20 minutes after 11. The House is not in session. Well, let us go to work.

Mr. Secretary Symington, will you and your staff come around, please, sir.

If the news services want to make any pictures, you make them now. [Pictures taken.]

STATEMENT OF HON. W. STUART SYMINGTON, SECRETARY OF THE AIR FORCE, ACCOMPANIED BY GEN. HOYT VANDENBERG, CHIEF OF STAFF, AIR FORCE

The CHAIRMAN. Now, Mr. Secretary, we have under consideration H. R. 1437, the part of which dealing with the Army begin title I and title II dealing with the Air Force.

As you are Secretary of the Air Force, the committee would be delighted to have you make any statement that you desire with reference to that portion that fits your service.

Secretary SYMINGTON. Thank you, Mr. Chairman. I have a very short statement here, and if it meets with your approval I would like to read it and then if there are any questions I would be glad to answer them. General Vanderberg can take up some other aspects of the bill that he would like to bring up.

The Department of the Air Force appreciates the opportunity to appear here in support of this authorization bill.

I should like to briefly discuss the problems and programs of the Air Force in relation to the need for the enactment of this legislation. General Vandenberg and his deputies will provide that degree of detailed information you may wish concerning the Air Force. He and his staff are prepared to discuss with you our present capabilities as a fighting force and the effect which this legislation, when enacted into law, will have on the future of our Air Force.

The United States Air Force was created as an autonomous military service by the National Security Act of 1947; and it is now necessary to elaborate the nature and scope of the Air Force so created. To that end, the authority of definitive legislation is needed to provide guidance and continuity.

During the period just passed, and since the creation of the Air Force, our energy has in large part been devoted to placing in operation the first phase of the program developed from the findings of the President's Air Policy Commission and the Congressional Aviation Policy Board.

This legislation is designed to provide for the size and type of an Air Force which is the minimum required for national security. Considerable progress in planning and programing for the later phases has

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been accomplished. This type of long-range planning for national security has been debated, amended, and made an integral part of national policy through past actions by the Congress. I should like to emphasize here that legislation of this character is contained in the basic legislative program of the Secretary of Defense; and also that it has the approval in principle of the Secretary of the Army and of the Secretary of the Navy. The Navy Department already has such legislation.

The Bureau of the Budget has approved the desirability of this type of authorization bill setting up planning objectives for the military services.

The purpose of this legislation is to authorize an Air Force capable, in conjunction with the other armed services, of meeting whatever international crises might be forced upon this country.

In the atomic age of lightning attack, air power instantly capable of defense and sustained effective retaliatory attack is a basic need of the Nation. Without such capacity, when within a few years the one group of countries capable of attacking the United States will possess in quantity the absolute weapon, the lives of our people will be in daily jeopardy. That would not seem to be the proper heritage to leave our children.

At the present time the Navy alone among the three services has a statutory personnel ceiling. The military personnel strength of the Air Force and the Army is dependent upon the Selective Service Act of 1948. Establishment of the statutory military personnel authorization for the Army and the Air Force by enactment into law of this bill would create a framework within which these two services could plan and program on a reasonably firm, long-term basis.

Authorizations provided in this bill, including authorization for 24,000 aircraft, plus annual procurement authorization of 5,200 aircraft for replacement of unserviceable and obsolete types, and for the creation and maintenance of a serviceable war reserve, round out the provisions for personnel and aircraft.

Authorization for funds to be available until obligated and expended is also provided in this bill. This places long-range procurement and research planning upon a more businesslike basis.

I consider the passage of this authorization act essential to the security of the United States. If you have any questions, sir, I would be glad to answer them.

The CHAIRMAN. Thank you, Mr. Secretary.

I want to compliment you on your clear and concise statement.

I note you state this:

> This legislation is desired to provide for the size and type of an Air Force which is the minimum requirement for national security.

Section 201 of the bill says that the United States Air Force shall have an authorized strength of 70 air groups and 22 separate Air Force squadrons, supplemented by 61 Air Force Reserve groups, together with necessary supporting and auxiliary units.

In your prepared statement, you stated you felt that that was the type of Air Force which is the minimum required for national security: is that correct?

Secretary SYMINGTON. Yes, sir.

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The CHAIRMAN. Would you please advise the committee if you have such a force today?

Secretary SYMINGTON. No, sir.

The CHAIRMAN. Will you please inform the committee what type of Air Force you have today.

Secretary SYMINGTON. Well, at this time, sir, we have around 59 groups.

But in order that the position of the Air Force with respect to the new program is clear, which reduces that number to 48 groups, this is our position:

The Air Force and I, personally, have testified that we believe the 70-group program is the right program. The President in effect approves this because he authorizes us to have this legislation. Nevertheless, he does not feel that because of other world commitments it is possible at this time to have the money appropriated beyond the 48-group program and therefore the Air Force, which only sees that part of the program peculiar to the Military Establishment, supports the over-all program.

The CHAIRMAN. Then, as I understand from your statement, all military authorities, including the Commander in Chief, agree that the maximum strength of the Air Force should be what is known as the 70 air group—that is, authorized.

Secretary SYMINGTON. I would say, sir, that they approve the authorization of the 70 group.

The CHAIRMAN. That is right, they approve the authorization.

But on account of maintaining the economic security of the country they fear thay can only make money available to have it 45.

Secretary SYMINGTON. I think 48, sir.

The CHAIRMAN. Forty-eight. That makes the issue clear, does it not?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. And the conclusion to draw from that would be if we had the money then they would be supporting what you feel to be the minimum requirement, which would be a 70-group force.

Secretary SYMINGTON. From a military standpoint we agree to that, sir.

The CHAIRMAN. Yes, sir.

Secretary SYMINGTON. From the standpoint——

The CHAIRMAN. The only question why we haven't a 70-group force is because of dollars and cents; that is, due to the money.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Well, I saw in the budget, in reading it, where there were some $800,000,000 set aside for universal military training. I hardly think that the Congress is going to pass any universal military training bill this go-around. So the thought is running through my mind, in helping to sort of figure out where you can get the money, why wouldn't it be a good idea to use that $800,000,000 to try to carry out the objective which you all agree on, which is a 70-air-group. It would help that much, would it not?

Secretary SYMINGTON. You are asking me, sir?

The CHAIRMAN. Well, you needn't answer that, Mr. Secretary.

Mr. Brooks, any questions?

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Mr. BROOKS. Mr. Secretary, the present interim program for the Air Force, then, will constitute a scaling down, won't it, of what we have?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. But in your long-range over-all program you still feel should be the 70-group?

Secretary SYMINGTON. When the country can afford the 70-group program from a military standpoint we believe it is wise; yes, sir.

Mr. BROOKS. What part—just briefly and in summary, without disclosing any military secrets—of the Air Force are you going to scale down?

Secretary SYMINGTON. Mr. Brooks, that is classified, sir. I have the answers here but I would prefer to give them to you in a closed hearing.

Mr. BROOKS. Well, is there anything that you can see in the foreign situation now which makes us breathe easier than we did last year when you were up here and when this committee felt that we should have a 70-group force?

Secretary SYMINGTON. Well, of course, I don't know much about the foreign situation, but I would say from what I know about it there is not much difference between it today and then.

Mr. BROOKS. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. Mr. Secretary, did the President's Air Policy Commission make any recommendation with respect to the 70-air-group?

Secretary SYMINGTON. Yes, sir.

Mr. COLE. Your present recommendation of a 70 air-group is supported by a recommendation of the President's Air Policy Commission.

Secretary SYMINGTON. Yes, sir.

Mr. COLE. Is it supported by a determination of the congressional Aviation Policy Board?

Secretary SYMINGTON. Yes, sir.

Mr. COLE. That is all.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. Last year when we added $822,000,000 to the appropriations bill we made it available until 1952, if I remember correctly.

Now, on the question of an additional appropriation this year toward the accomplishment of a 70-air-group program, it would be carrying forward what we did last year, would it not?

Secretary SYMINGTON. Yes, sir.

Mr. KILDAY. Now, if we do not go ahead and supply the funds to carry out the experimentation, development, and new production that is going on, don't we stand to lose money?

Secretary SYMINGTON. Well, what you would really be doing, Mr. Kilday, is you would be postponing—you get the authorization bill and you go ahead with the present program—the time when you would have the 70-group.

Mr. KILDAY. But if we can't carry that program on until 1952 in the anticipated appropriation for 70-group, we are bound to lose money on the amount of money we put up last year. What was the total? General Rawlings would know.

General RAWLINGS. $1,937,000,000.

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Mr. KILDAY. $1,937,000,000 we put up last year, and that was looking to the objective of 1952, having the 70-group in existence.

Secretary SYMINGTON. Yes, sir.

Mr. KILDAY. So if we don't implement the appropriations we are bound to lose a percentage of the money we have already put up.

Secretary SYMINGTON. Yes, sir.

Mr. KILDAY. Now, I notice in the bill—you skipped a paragraph in your statement with reference to it, as to authorizing aircraft by numbers—section 203 authorizes 24,000 serviceable aircraft. Last year we were talking about air-frame pounds, if I remember correctly.

Secretary SYMINGTON. Yes, sir.

Mr. KILDAY. Has the Department changed its position as to the proper authorization now, that it ought to be by numbers rather than air-frame pounds?

Secretary SYMINGTON. We think that numbers is a better way to identify the Air Force. Air-frame weight is good from the standpoint of the industry as the primary identification, but from the standpoint of operating an Air Force the number of planes, in our opinion now, sir, is better than the estimate of total air-frame weight.

Mr. KILDAY. Have we said much when we say 24,000 planes without saying how many will be B–36's, let us say, or your F–80's, with the difference in the cost of the individual frame?

Secretary SYMINGTON. I think when we define it in air-frame weight we get a little too restrictive on it as against the numbers of planes.

Mr. KILDAY. Then, this leaves it entirely to the Appropriations Committee to set the formation of the Air Force, because the number of the heavy planes you have, as compared to the lighter planes, is going to depend entirely upon the amount of money authorized or reported by the Appropriations Committee.

Secretary SYMINGTON. That would be true, sir. But the Joint Chiefs of Staff would agree on what type and character of groups we would have.

Mr. KILDAY. Well, you are going on with the development of the long-range strategic bomber.

Secretary SYMINGTON. Despite observations to the contrary we are; yes, sir.

Mr. KILDAY. Well, how about the B–36? There has been a lot of criticism about it. What is the Air Force's position with reference to it?

Secretary SYMINGTON. Mr. Kilday, I have been here for some years now, and I think the hatchet job that is being done, and has been done on the B–36 is the best hatchet job I have seen since I have been in town.

Mr. KILDAY. Well, you have seen some hatchet jobs.

Secretary SYMINGTON. Yes, sir.

I would say this, that the B–36 today is the longest range and highest-flying airplane of its type in the world, and tomorrow—and specifically this year—will be the fastest bomber of that type.

We have some—I would rather not comment on it further, except to the committee in closed session. There will be a time when we would like to make considerable comment about that particular activity.

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Mr. KILDAY. But you would prefer the bill to have the number of groups, the number of personnel—officers and enlisted—and the number of planes, rather than the air-frame pounds, as previously?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Mr. Bates.

Mr. BATES. Mr. Secretary, what is the amount in the budget to support the 48-group program?

Secretary SYMINGTON. Beg your pardon, sir?

Mr. BATES. What is the amount in the present budget that will support the 48?

Secretary SYMINGTON. $4,554,000,000.

That, however, Mr. Bates, does not include $400,000,000 for increased pay that is allocated to the Office of the Secretary of Defense and $430,000,000 that is allocated to the Office of Secretary of Defense for construction which he is to allocate between the services.

Then, also, sir, there is additional stock-piling figure, and there is also additional UMT figure.

Mr. BATES. How much more money would be necessary, say, to support the so-called 70-group program, over and above what is now in the budget?

Secretary SYMINGTON. Frankly, we haven't any detailed figures on that, but last year, based on what we figured we could support the development of the full 70-group program on, I think about 6½ billion.

General RAWINGS. At the level-off rate—in other words, when you hit the level—it would be 7½ billion dollars.

Mr. BATES. So there would be about three billion more for just the Air Force.

Secretary SYMINGTON. That chunk of money, which I think is $1,300,000,000, plus, in the Office of the Secretary of Defense to be allocated among the three Services, and whatever is given to the Air Force out of that contingency fund added to the 4½ billion—it would be the difference between that figure and the 6½ billion.

Mr. BATES. Thank you very much.

The CHAIRMAN. Mr. Price?

Mr. PRICE. No questions.

The CHAIRMAN. Mr. Cole.

Mr. COLE. Mr. Secretary, your reference to some hatchet work intrigues me. I am curious to have you tell us who is wielding the hatchet. I don't care about the individuals.

Secretary SYMINGTON. I would be curious to know, myself, sir. We are doing our best to find out, and we would like to come before the committee if and when we do.

The CHAIRMAN. Any further questions, Mr. Cole?

Mr. COLE. No, except that doesn't clear up my mind very well.

To what were you referring when you said a hatchet job had been done?

Secretary SYMINGTON. Well, there have been a good many articles and letters written in criticism of the B-36. This week there have been broadcasts stating that the airplane was in effect no good. That is distressing to us because we think the airplane is an exceptionally good airplane.

Mr. COLE. Well, the identity of the people that wrote the letters and articles to which you refer must be known, is is not?

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Secretary SYMINGTON. We are attempting to find out. I would prefer not to get into the detail of it. I would be glad to discuss it with you, sir, and bring you all the evidence that we have to date at your convenience. Until we have the complete story we would rather not discuss it as a complete story.

The CHAIRMAN. Mr. Fisher, any questions?

Mr. FISHER. No questions.

The CHAIRMAN. Mr. Norblad.

Mr. NORBLAD. I would like to ask you about the Reserve program. I notice the Navy is setting up Reserve programs throughout the country, and so is the Army, and they are being set up purely independent of each other. It seems to me there would be a tremendous saving if they work together on their flights, instead of having independent bases and stations, and so forth. Could you comment on that, Mr. Secretary?

Secretary SYMINGTON. Well, I was always, Mr. Norblad, for a law that put the Services closer together, and where those problems could be handled in what I would think a more businesslike fashion.

Mr. NORBLAD. Are you people working toward the end of consolidating or cooperating on your Reserve program? It seems to me you have been scattered throughout the country and with some consolidation there would be a tremendous saving.

Secretary SYMINGTON. I agree with you on that.

Mr. NORBLAD. Let me ask you about your active flying bases. To revert back to the well-known one here in Washington: The Bolling Field and Anacostia Field, and other duplications in the world—not as to your Reserve program but as to your active regular flying program—are you taking further steps to try to clear that up and consolidate those duplicating facilities?

Secretary SYMINGTON. You mean the Air National Guard and the Reserves?

Mr. NORBLAD. No. I am speaking of the Regular Establishment, where you have so many duplicating fields such as Bolling and Anacostia here in Washington.

Secretary SYMINGTON. That, of course, is a problem for the Secretary of Defense, sir, or the National Defense Establishment.

Mr. NORBLAD. That is being worked out, though?

Secretary SYMINGTON. It is being worked on. I think they have made some good progress, sir.

Mr. NORBLAD. Mr. Chairman, I just have one more question, if I may, and then I am through.

The CHAIRMAN. Take all the time you want.

Mr. NORBLAD. Thank you.

In the event the Congress were to abolish flight pay, there would be considerably more funds for building up the air-group program, would there not?

Secretary SYMINGTON. We have averaged over three deaths a day since VJ-day in military airplanes. We might get a little more equipment if we abolished flying pay. In my opinion, we would also abolish morale in the Air Force and naval aviation at the same time.

The CHAIRMAN. I might add that I don't think there is the slightest intention on the part of Congress to do that. We might look into the

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question of the higher echelon of it, but not as to the boys that do the actual flying.

Mr. Havenner, any questions?

Mr. HAVENNER. No.

The CHAIRMAN. Mr. Doyle, any questions?

Mr. DOYLE. No.

The CHAIRMAN. Mr. deGraffenried?

Mr. DEGRAFFENRIED. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Van Zandt.

Mr. VAN ZANDT. What is the composition of the 48-group Air Force at the moment, from the standpoint of Regulars, Reserves, and National Guard?

Secretary SYMINGTON. It is not a 48-group program at the moment. It is more than that, but the groups aren't full.

At this time, Mr. Van Zandt, we have 411 000 all told—357,450 enlisted and 53,550 officers and warrant officers. That includes Regular and Reserve officers on active duty.

Mr. VAN ZANDT. I see. That is for the 59-group.

Secretary SYMINGTON. That is what we have now.

Mr. VAN ZANDT. Now, if you cut it down to 48.

Secretary SYMINGTON. Well, those groups would be more complete. As a matter of fact, we would increase slightly. We would have 57,000 officers and 355,000 enlisted people, or a total of 412,000.

Mr. VAN ZANDT. Now, without violating security, would it be possible for you to tell me the effect that the reduction from the 59-group to the 48-group will have upon the National Guard and the Reserves?

Secretary SYMINGTON. Well, when you get into the National Guard picture, the figures are as follows: Today in the National Guard we have 5,382 officers and 30,462 enlisted men. That is not what we would hope to get under the present program, including the 48-group. We would hope to get 7,911 officers and 50,327 enlisted.

I will give you those figures again: 5,382 officers, and we hope to have 7,911; 30,462 enlisted, and we hope to have 50,327.

Now, in the Reserve program we have decided that we are going to cut down very heavily in our Reserve picture as against what we have in order that we can concentrate on the reserves and make what we have good instead of having it so attenuated.

Today we have 232,903 officers and we hope to have under this plan 55,000. We plan to make a heavy cut. As to enlisted men, we have 187,000 and we hope to have 83,000—a heavy cut. Actually, however, those figures are misleading in that we haven't the equipment even to handle that number of reduced people. Today in the Reserves we have 20,806 officers, and 19,415 enlisted men actively participating in training.

The CHAIRMAN. Mr. Gavin.

Mr. GAVIN. Assuming, Mr. Secretary, the 6½ billion dollars were at present available for you, how long a time would it take to build up the 70-air set-up?

Secretary SYMINGTON. Well, the program as outlined before, sir, involves the completion of the 70-group program in the year 1952.

The CHAIRMAN. Even if the money were available now.

Secretary SYMINGTON. Yes.

Mr. GAVIN. All right.

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Secretary SYMINGTON. This would be the second increment of that particular program.

Mr. HÉBERT. Mr. Secretary, with reference to the drastic cut of your Reserve program that you spoke of, is that purely because of a lack of equipment or the result of planning or desire?

Secretary SYMINGTON. We have today, Mr. Hébert, 232,000 officers enrolled and we are going to train only 55,000. That is because we would rather have a tighter Reserve. But even if we had 55,000 today we are only training 20,806 officers.

I would like to have General Quesada comment.

General QUESADA. Future plans provide for more concentrated training as applied to the wise and economical expenditure of the funds that are being made available.

In the past we feel that we have made a tactical error in distributing our money and training on a wider field, and now we hope to combine it to a more narrow field, as was suggested. It would mean that 55,000 officers will get concentrated training, of which 25,000 will be in a pilot's pool.

Mr. HÉBERT. I am thinking of the desirability of maintaining your present Reserve officer strength among those who still desire to continue in the Reserve.

General QUESADA. There will be no attack on that whatever. The number, of 55,000, refers to those who will participate actively in the program. The number between 25,000 and 232,000 are those who will not be able to participate but will retain their commission if they see fit to do so and participate in correspondence courses, and things like that.

Mr. HÉBERT. In other words, it is a matter of planning and not a matter of lack of equipment or budgetary limitation?

General QUESADA. It is a matter of planning and it is fixed by budgetary limitations.

Mr. HÉBERT. What is the primary reason: Budgetary or planning?

General QUESADA. Budgetary.

Mr. HÉBERT. That is what I wanted to find out. In other words, if you had more equipment or higher budget, you would expand. It is more desirable, then, to expand than to cut back.

General QUESADA. That, I believe, is correct; yes, sir.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. Mr. Secretary, do you consider it essential that this Nation have a 70-group air program in order to attain superiority in the air over all nations of the world?

Secretary SYMINGTON. From the military standpoint we have felt and feel that the 70-group program is advisable, Mr. Elston, but at this time the administration says that the money is not available. The administration has come out with a program. They know of the other commitments, which we do not know of, and we support the program.

Mr. ELSTON. The chairman mentioned UMT, and of course I have heard of a number of other things, like the St. Lawrence Seaway and socialized medicine and a few other things, which of course wouldn't mean very much if we were invaded from the air, and some other nation of the world had superiority over us.

So, under the circumstances, I take it your position is still what it was a year ago, that we need a 70-group program.

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Secretary SYMINGTON. When we can afford it, I think it would be right to our security.

Mr. ELSTON. Well, do you think if any nation in the world contemplates invading this nation from the air they are going to wait until the Budget Bureau makes up its mind that the money is available?

Secretary SYMINGTON. I would rather not answer that question.

The CHAIRMAN. Mr. Winstead.

Mr. WINSTEAD. Mr. Secretary, would you mind giving us the difference, or could you give us the difference in the actual plane strength or the striking power between the 48- and 70-group Air Force?

Secretary SYMINGTON. I have that right here, Mr. Winstead, but it is classified and I would prefer to give it to you in closed session, or off the record.

Mr. WINSTEAD. In other words, you either cut your striking force down or you cut down the assistance you can give the National Guard or Reserve group, or both, by cutting down to 48.

Secretary SYMINGTON. That is correct, sir.

The CHAIRMAN. Mr. Blackney?

Mr. BLACKNEY. No question, Mr. Chairman.

The CHAIRMAN. Mr. Johnson of California.

Mr. JOHNSON. Mr. Secretary, I notice in the bill you provide for the procurement of 5,200 planes a year. Now will that amount of business be a large enough amount so that you will have a production line, the nucleus of a production line, so in the event of a crisis we can expand that rapidly?

Secretary SYMINGTON. Yes, sir; it would.

Mr. JOHNSON. That is one of the big problems, isn't it, to have a production line that can be rapidly expanded?

Secretary SYMINGTON. It is important to have an industry capable of expansion; yes, sir.

Mr. JOHNSON. Then, I suppose you carry on a scientific research and development program right alongside of that.

Secretary SYMINGTON. Yes, sir.

Mr. JOHNSON. So that for every plane that comes off there is another one back further in the factory that is being worked on and is going to take the place of the one that is coming off the line in a few years.

Secretary SYMINGTON. That is right.

For example, as Mr. Kilday mentioned, with respect to the B–36, the first time I saw the B–36 was in wood in January 1942. It is over 7 years ago.

When you have a plane you also constantly try to improve its performance, the same plane, instead of shifting to an entirely new model. That, of course, increases the time involved in building it but saves a good many hundred million dollars to the Government.

Mr. JOHNSON. Now, is there in the budget a provision to make Muroc Lake the expanded unit that is provided for in your plans that you approved?

Secretary SYMINGTON. I would have to have General Rawlings answer that question—you mean the land or the housing?

Mr. JOHNSON. I am interested in the land.

General RAWLINGS. Mr. Johnson, in the actual budget we do not have construction money because the authorization bill has not gone through. But in the authorization bill we will have provision for Muroc Lake.

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Mr. JOHNSON. That is in the public works bill for the Air Force.

General RAWLINGS. Yes, sir.

Mr. JOHNSON. That will include all that extra land that is in the last plan?

General RAWLINGS. Yes, sir. That is what we are proposing in our authorization bill.

The CHAIRMAN. Any questions from any other members of the committee?

Mr. BATES. Mr. Secretary, did you make a comparison between the number of personnel under the so-called 59-group force and the 48 that you will have under the provisions of the budget that we now have before us?

Secretary SYMINGTON. Well, Mr. Bates, at 59-group we are not in any sense full. We were building the program as we expanded.

If you remember, last year you allowed us 66.

Mr. BATES. Yes, sir.

Secretary SYMINGTON. At this time we have 53,550 officers and 357,450 men. Even in the reduced program—full—we would have 57,000 officers, or around 3,500 more, and 355,000 men.

The authorization bill we are asking for, however, gives us a strength of 75,300 officers and 426,700 men, a total of 502,000.

Mr. BATES. So there would be a natural increase in personnel, notwithstanding the fact that the money available—in other words, you would have relatively the same number of personnel?

Secretary SYMINGTON. That is right.

Mr. BATES. In the Air Force under the so-called 48 budget that you now have under the so-called 59 budget.

Secretary SYMINGTON. That is correct, sir.

The CHAIRMAN. Now, Mr. Secretary, I wish you would advise the committee, if you can, if there is $800,000,000 added to your budget what that would hatch out?

Secretary SYMINGTON. Well, that would have to be studied, sir. I don't know that figure.

The CHAIRMAN. Well, how close would it be to obtaining your objective, or how much would it would be under what was laid down for your objective last year?

Secretary SYMINGTON. Well, if you assume that of that $800,000,000—this is just assuming—we got a third, which would be around $275——

The CHAIRMAN. Let us assume you are going to get $800,000,000.

Secretary SYMINGTON. Beg pardon?

The CHAIRMAN. Let us not assume any thirds now. If you get $800,000,000, which is in the over-all budget—it is transferred from one item to another item, but still within the $42,000,000,000 budget—I would like to know what you accomplish by it? What could be accomplished by it?

Secretary SYMINGTON. We would be about $2,000,000,000 short.

The CHAIRMAN. You mean two million?

Secretary SYMINGTON. Two billion.

The CHAIRMAN. Two billion?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. How much would that purchase, and what would it create, plus whatever you have?

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Secretary SYMINGTON. I would really like to study that out.

The CHAIRMAN. I would like for you to study that out and give us that information Monday morning at 10 o'clock.

Mr. KILDAY. Mr. Chairman——

The CHAIRMAN. Wait 1 minute.

Secretary SYMINGTON (confers). Yes, sir; we can give it Monday morning.

The CHAIRMAN. You say you have it now?

Secretary SYMINGTON. No, sir.

Mr. KILDAY. Last year when we increased the budget it did not affect personnel at all; I mean, when we increased the appropriation by $822,000,000. That was entirely procurement.

Secretary SYMINGTON. That is right.

Mr. KILDAY. And everything else, for pay, subsistence, and housing remained the same as reported by the committee.

Secretary SYMINGTON. There was a compromise.

Mr. KILDAY. In these figures that we get Monday, I think we ought to be able to know to what extent we could consistently carry on the procurement program which we embarked upon last year by the addition of that money.

The CHAIRMAN. That is right.

Secretary SYMINGTON. Yes, sir.

If I follow your thought correctly—to be sure we get it—would you like to have any additional money that would be considered to apply exclusively to procurement? Is that correct?

Mr. KILDAY. So in '52 we would have 70 groups in the meantime absolute minimum of personnel that would have to be trained and developed for that 70 groups.

Secretary SYMINGTON. General Smith would like to make a comment on that.

General SMITH. In that connection, sir, the appropriation last year for procurement did start us on the way toward modernization and toward an eventual force of 70 groups in its first phase, if it kept up. If we applied the bulk of any moneys which might become available to aircraft procurement we would be further stretching a structure that is not properly supported now, and we must build a structure which is consistent with the aircraft.

Mr. KILDAY. In other words, your machines and your men have to come out even.

General SMITH. Yes, sir.

Mr. BATES. One other question.

The CHAIRMAN. Mr. Bates.

Secretary SYMINGTON. We didn't originally present it to the Bureau of the Budget, did you contemplate 59 groups, or more?

Secretary SYMINGTON. We didn't originally present it to the Bureau of the Budget, but originally presented it to the Secretary of Defense, and our presentation was made on the ceiling figure that we could support, which figure was, as given to the Military Establishment around $15,000,000,000, counting stock piling, sir.

Mr. BATES. Well, let me put it another way: In speaking of the air groups, did you consider 59 air groups in that request, or a lesser number, or more?

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Secretary SYMINGTON. Our presentation to the Office of the Secretary of Defense was based on various amounts of money that the over-all Military Establishment might get.

When the decision was made as to the over-all picture, we presented our group picture on the basis of that decision, and therefore we presented 48 groups, which was the figure approved by the Joint Chiefs of Staff.

Am I correct on that? I am out of my field here. It is a military question.

Mr. BATES. Well, do you subscribe to that, General?

General VANDENBERG. Would you repeat it?

The CHAIRMAN. What was the question, Mr. Bates? I lost track of it myself.

Mr. BATES. Mr. Chairman, the question was whether or not he submitted to the Bureau of the Budget originally funds in support of a 59-group force, or more. or less. That is the question.

General VANDENBERG. As I recall it, sir, we submitted to the Secretary of Defense budget figures in support of a 70-group force, a 59-group force, and a 48-group force.

Mr. BATES. Fine. All right. We have the answer.

What was the amount, Mr. Chairman, that you estimated the 70-group force would cost, 59, and so on?

Secretary SYMINGTON. We are already on the record on that, sir, that the 70-group force would be around 6½ billion.

Mr. BATES. Go ahead. Sixty-six?

Secretary SYMINGTON. The figures for 66 groups were submitted.

Mr. BATES. Well, can the general remember it? Somebody here must have the figures.

The CHAIRMAN. If not, put it in the record.

Mr. BATES. Wait a while. I think it is very important. You asked the same question yourself. I am trying to find out how much that $800,000,000 will take up.

The CHAIRMAN. He will bring that up Monday.

Mr. BATES. Very well.

Secretary SYMINGTON. We would rather get those figures for you. We know what the 70-group program was, and that was testified to. We know what the 48-group figure is, and we presented that this morning. The figures between we are not sure of, have forgotten, and would like to go back and restudy it and give you the facts.

Mr. VAN ZANDT. Mr. Chairman.

The CHAIRMAN. Mr. Van Zandt.

Mr. VAN ZANDT. Mr. Secretary, to go back to the statement you made some time ago about the hatchet act, do you have reference to the commentator who is on some time between 5 and 6 o'clock each evening, who is belittling the defenses of the country, and especially the Air Force?

The CHAIRMAN. I suggest, Mr. Van Zandt, let us not ask those kind of questions. We don't want to embarrass the Secretary now. He will tell us all that in executive session.

Mr. VAN ZANDT. I think the statement should be repudiated.

The CHAIRMAN. We will go in executive session and take that up later.

Secretary SYMINGTON. Mr. Chairman, as long as Mr. Van Zandt has brought it up, I was not talking about any particular commentator.

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I was talking about long and consistent commentation, writings, letters, all of which to the best of our knowledge in the Air Force are false with respect to the operating performance of this airplane.

Mr. VAN ZANDT. All right.

The CHAIRMAN. In other words, just general cussing about this airplane just going on?

Secretary SYMINGTON. Beg pardon, sir?

The CHAIRMAN. Just general cussing about this particular airplane?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. All right, we will go into that in executive session later.

Members of the committee, let us take a recess. But before we do so, I want to compliment the Secretary on the splendid statement. I think the country is indeed fortunate to have such an outstanding head of our armed service. The issue is clear-cut. His statement is explicit as to the requirements and the constitutional responsibility is upon the Congress.

I thank you, Mr. Secretary, and will see you Monday morning at 10 o'clock.

Secretary SYMINGTON. Thank you, sir.

(Whereupon, at 12:08 p. m., the committee adjourned until Monday, January 31, 1949, at 10 a. m.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Monday, January 31, 1949.

The committee met at 10 o'clock, Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. Let the committee come to order. I regret to say that due to a death in his family, our able colleague from Louisiana, Mr. Brooks, will not be present for several days.

Mr. Secretary Symington, will you please take the witness chair?

Now, Mr. Secretary, the newspapers want to take a picture of you, so pose for them down there before we go to work.

(Pictures taken.)

The CHAIRMAN. Now, Mr. Secretary, when the committee recessed Friday while we were considering H. R. 1437, you stated that it would require an additional $2,000,000,000 to provide for a 70 air group over and above the $800,000,000 that was being discussed at that time.

Have you any comments you want to make on that statement?

Secretary SYMINGTON. Yes; I have, Mr. Chairman. I have used the leveling-off figure in the 70-group figure, sir, and not the figure for the fiscal year 1950.

I should have used the figure 6½ billion, instead of 7½ billion.

Now I have a very short statement here I would like to read for the record clearing up several points, if I may.

The CHAIRMAN. All right.

Now, read it carefully so all the members can get it and so the country can understand what we are talking about and the reporters can carry it in such manner that they themselves will know what it is about.

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Secretary SYMINGTON. Yes, sir.

Mr. Chairman, in verbal testimony last Friday I inadvertently left out the following:

Authorizations provided in this bill, including authorizations for 24,000 aircraft, plus annual procurement authorization of 5,200 aircraft for replacement of unserviceable and obsolete types and for the creation and maintenance of a serviceable war reserve, round out the provisions for personnel and aircraft.

In addition, Congressman Kilday pointed out that we had given up the air-frame-weight approach for the number of planes approach, and after discussion over the week end, we believe it would be advisable to have section 203 of the bill not only include allowance as to the number of planes, but also allowance of total air-frame weight of 225,000 tons, which is the estimate of the weight of the 24,000 planes in question.

The CHAIRMAN. Then you would want both in there?

Secretary SYMINGTON. Yes, sir; if we could.

In answer to one of your questions last Friday, Mr. Chairman, I indicated that assuming we receive the $800,000,000 additional of which you spoke, we would still be $2,000,000,000 short of the second-year planning for the 70-group program.

This was not correct because I used the leveled-off figure of 7½ billion dollars instead of the planned figure for 1950 of 6½ billion dollars. Guessing at the amount of money that would be allocated to the Air Force of the $430,000,000 placed in bulk in the Office of the Secretary of Defense results in our belief that with the addition of this $800,000,000, we would be about $1,000,000,000 short of the planned program, this instead of $2,000,000,000 and we are correcting our testimony accordingly.

You asked a question—

If you get $800,000,000, which is in the over-all budget—it is transferred from one item to another item, but still within the $42,000,000,000 budget—I would like to know what you accomplish by it? What could be accomplished by it?

The answer is that if the Air Force was given an additional $800,000,000—this was the figure I could not give you Friday and we worked on in the week end—in fiscal year 1950 over the allowances presently recommended in the budget, it would be able to establish in fiscal year 1950 a program of 57 effective groups instead of 48.

Since the original objective in fiscal year 1949 was to a 66-group phase of a 70-group program and activations took place accordingly, there would, of necessity, have to be some readjustments within the present composition of the force.

The military personnel requirements under this 57-group program would be a man-year figure of 440,000 and an end-of-year strength of approximately 450,000 instead of 412,000 under the 48-group program.

Four hundred and thirty-five million dollars of this $800,000,000 would be used for the procurement of aircraft.

This additional sum for aircraft procurement would make a total of 1.915 billion dollars available in fiscal year 1950 as against 1.545 in fiscal year 1949. This would permit an increase in aircraft procurement from 1,668 to 2,370, or an increase of 702 aircraft.

The remainder of the $800,000,000, or $365,000,000, would be used to secure the proper balance among the other areas of the 57-group force, such as men, materials, and equipment.

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In reply to Mr. Kilday's question which we are taking the liberty of including as part of the answer to this question, the procurement of $1,915,000,000 that would increase the total number of aircraft procured from 1,668 to 2,370 compares to a figure of last year for $1,545,000,000 and a purchase of 2,437 aircraft.

In that connection, sir, we would like to point out that the airplanes we are buying this year in developing the programs are larger airplanes and that accounts for the apparent difference. And also the point that you brought up, that we had actually had $1,937,000,000 last year, but $392,000,000 of that was for plant improvement, subcontracting cost incident to the specification of the Congress to spread the work around, and production changes after we had gotten into production.

In summary, the money to be divided as follows, if we obtain the $800,000,000, would read:

Aircraft procurement	$435,000,000
Military personnel	94,000,000
Maintenance and operations	235,000,000

And then a relatively small item for some additional research and development, some additional salaries and administrative expense, and additional nonaircraft procurement, such as electronics and ground-handling equipment, totaling $36,000,000, or a total of $800,000,000.

This in summary, then, would provide 57 groups, with 450,000 military personnel end of year strength and 2,370 aircraft procurement.

In answer to a question from Mr. Bates, the final figures presented were for 59 groups and 48 groups. Those were the only two-group figures that were presented finally to the Bureau of the Budget and they are respectively $5,850,000,000 for the 59 groups and $5,025,000,000 for the 48 groups.

The CHAIRMAN. Thank you, Mr. Secretary.

Now, Mr. Secretary, have you an extra copy there that you can hand over to the press table? If not, we have one up here.

Secretary SYMINGTON. Yes, I have.

The CHAIRMAN. Jimmy, give this to the press table.

Now, Mr. Secretary, so we can all get right down to it, in the 1949 budget there was $1,915,000,000 made available?

Secretary SYMINGTON. For procurement, sir?

The CHAIRMAN. Yes, sir.

Secretary SYMINGTON. $1,937,000,000, I think the figure was.

The CHAIRMAN. $1,937,000,000?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Now, you used a portion of that for retooling?

Secretary SYMINGTON. We used it this way: A certain amount for retooling and a certain amount for subcontracting and a certain amount for fixing plants and a certain amount for contract change orders.

Specifically, for the retooling and the changes of plants we had $150,000,000, for the estimated additional cost for change orders we had $150,000,000, and for subcontracting additional expenses incident to getting in small business we had $74,000,000, or a total of $375,000,000, and the remaining $18,000,000 we had for making particular changes on airplanes which we knew we wanted to make and specified at that time.

The CHAIRMAN. All right.

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After these diversions of your $1,937,000,000 that you just have spoken about, how much did you have left for purchasing airplanes?

Secretary SYMINGTON. $1,545,000,000, sir.

The CHAIRMAN. And that authorized you to procure how many airplanes?

Secretary SYMINGTON. 2,437.

The CHAIRMAN. They are under contract now?

Secretary SYMINGTON. That is correct, sir.

The CHAIRMAN. When will they be delivered?

Secretary SYMINGTON. Well, some of them will be delivered this year and some of them next year and some of them the year after.

The CHAIRMAN. Some of them will be delivered in the calendar year 1949 and some in the calendar year 1950; is that correct?

Secretary SYMINGTON. That is correct, sir.

The CHAIRMAN. So that you consider your first step in an orderly building program?

Secretary SYMINGTON. That is right, sir.

The CHAIRMAN. All right.

Mr. DURHAM. Have you a break-down on the type, Mr. Secretary?

Secretary SYMINGTON. Yes; I think we would rather classify that, but we will get that for you, Mr. Durham.

Mr. DURHAM. All right.

The CHAIRMAN. Now, in this budget for the fiscal year 1950 there was set up $1,480,000,000.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Now, the $1,480,000,000 will procure how many planes?

Secretary SYMINGTON. 1,668, sir.

The CHAIRMAN. So the budget now sets up $1,480,000,000, which will buy 1,667 planes?

Secretary SYMINGTON. 68; yes, sir.

The CHAIRMAN. 1,668?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Now, you say if Congress augments that sum by an additional $800,000,000 you will then have for procurement a total of $2,280,000,000; would you not?

Secretary SYMINGTON. A total—would you say that again, sir?

The CHAIRMAN. Well, you just want to add $800,000,000 to your $1,480,000,000 and that would give you 2 billion——

Secretary SYMINGTON. Yes, sir; that is right.

The CHAIRMAN. That would give you a total of about $2,280,000,000?

Secretary SYMINGTON. That would be if you put all of it in procurement.

The CHAIRMAN. That is right.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. But you say you can't use all of that for procurement because you have to use it for various other items?

Secretary SYMINGTON. Yes, sir; we would have to build it up in balanced fashion. In addition to the additional airplanes incident to the 57 groups, we would have to have the additional personnel and the additional maintenance and operation and the relatively slight——

The CHAIRMAN. All right. You have to take $94,000,000 of that for military personnel, you say?

Secretary SYMINGTON. That is right, sir.

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The CHAIRMAN. You would have to take $235,000,000 for maintenance and operation?

Secretary SYMINGTON. That is correct, sir.

The CHAIRMAN. You would have to take $36,000,000 of that for other things?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Now, what is the total of those three sums?

Secretary SYMINGTON. The total of those three sums is $365,000,000.

The CHAIRMAN. Then, you would take $365,000,000 from your total of $2,280,000,000?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. And that would give you a net balance of how much for procurement?

Secretary SYMINGTON. I think it is $1,915,000,000.

General RAWLINGS. Right, sir.

The CHAIRMAN. Then, you would have $1,915,000,000 for procurement?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. And that would turn out how many planes?

Secretary SYMINGTON. And that would turn out 2,370 planes.

The CHAIRMAN. 2,370 planes?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. That would be your second-year program?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. With the ultimate objective over a period of 5 to 7 years of reaching a 70-group program?

Secretary SYMINGTON. That is right, sir.

The CHAIRMAN. That would mean you would be in your second year, having a completed program on paper of 57 groups?

Secretary SYMINGTON. That is right, sir.

The CHAIRMAN. Fifty-seven groups.

Secretary SYMINGTON. Mr. Chairman, could I add a point to that, which might be pertinent?

The CHAIRMAN. Yes.

Secretary SYMINGTON. It is true that the $1,937,000,000 we got last year, but of that the $392,000,000 was for charges which made it possible for us to do a more efficient job and would be spread, in effect, over the 5-year period and, therefore, on any basis it is fair to say that even if we only took $435,000,000 of the $800,000,000 for aircraft procurement, we would be getting $370,000,000 more for aircraft procurement in 1950 than we had in 1949.

The CHAIRMAN. That is right.

Secretary SYMINGTON. In other words, the net figure for aircraft procurement in 1949, sir, was $545,000,000 and on the basis of the question that you asked on the $800,000,000, it would be $1,915,000,000.

The CHAIRMAN. You said you used three-hundred-some-odd-million dollars for tooling up. Does the committee understand that you advanced that sum of money to the aviation industry for equipment of plants?

Secretary SYMINGTON. I would like to run over that again. It wasn't all for retooling. If we went into an aviation program, we had to put some plants in condition that were idle and that took quite a little money. We also had to tool.

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The CHAIRMAN. All right. To what plants did you have to advance Government money to get them in financial condition to take Government contracts?

Secretary SYMINGTON. To the best of my knowledge, we did not do that with any company, sir, but where we had closed plants and did not have room—take one particular illustration. We wanted to make this very fast new jet bomber, the B-47, at Wichita, and nothing was being built at Wichita. So we opened up the Wichita plant and that cost money to open it up.

The CHAIRMAN. That is a Government plant, then?

Secretary SYMINGTON. That is right, sir.

The CHAIRMAN. Then you used that money for establishing a Government plant?

Secretary SYMINGTON. Yes, sir; for reopening it and getting it ready for production.

The CHAIRMAN. But you did not use any of that money that you spoke about in connection with retooling up for advancement to private-industry plants to enable them to accept Government contracts?

Secretary SYMINGTON. Well, we did not use it from the standpoint of giving them enough working capital to do business, but we might well have given them money for tools to build planes.

The CHAIRMAN. The point I am driving at is this: Are you getting credit in your price or are you getting paid back or anything for the money that you are advancing?

Secretary SYMINGTON. Oh, yes; very definitely so.

The CHAIRMAN. And it is reflected in the price?

Secretary SYMINGTON. Oh, yes.

Mr. Chairman, can I make a point there also, sir. When we knew that we had the program—this point came up in the testimony Friday by Mr. Kilday asking a question about the programing—we were anxious to get that money so we could start tooling now in order to take advantage of a long-term tooling set-up where we would get net a much better ultimate cost.

Now, could I go ahead just a minute, sir?

Mr. CHAIRMAN. Yes.

Secretary SYMINGTON. The figure for those two—the question of opening the plants and the question of the tools—was $150,000,000, of that $392,000,000.

The CHAIRMAN. Now this is a Government plant?

Secretary SYMINGTON. That would be Government plant or tools in any plant, whether it was Government or private.

Mr. DURHAM. It is operating on contract, though?

Secretary SYMINGTON. That is right. The tools, of course, belong to the Air Force and we get credit for that, in that they cannot take a tool charge and add it as an item of cost.

Now in addition to that, we had $150,000,000 in it for contract changes. As you know, in airplanes we do not have standardization. What we do essentially is purchase, you might say, performance at a weight and instead of coming in and asking for more money to take care of major contract changes, as for example putting in the B-36 the 4360 engine instead of the 3350, which it originally started with, we asked for a block sum of money that could be allocated out as these

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changes came up, and that added another $150,000,000 of the $392,000,000—totaling $300,000,000.

Then we had pretty much of a directive for our contractual relationship, from the Congress, to include small business wherever possible; and, therefore, we instructed the manufacturers of airplanes to subcontract as much work as possible.

It is also fair to say that we tried to give to airplane companies who were not successful in finished-design contracts subcontracting work so they could keep their personnel together and maybe get an airplane contract later. That was another $74,000,000, sir, of that $392,000,000.

And the remaining amount was for specific changes on specific airplanes that we knew we wanted to make and, therefore, we did not include in the $150,000,000 as part of general contract changes that would come up in the future.

The CHAIRMAN. All right. Now I want to digress for just a little bit. In view of this enormous procurement program, do you not think that the same provisions of renegotiation that were set up during the wartime should be applicable to all these contracts?

Secretary SYMINGTON. Mr. Chairman, the Air Force led last year in the effort to get renegotiation clauses in all its contracts and everything that we are purchasing today, sir, has a renegotiation clause in it.

The CHAIRMAN. That is written in the appropriation bill?

Secretary SYMINGTON. Yes, sir; that is correct.

The CHAIRMAN. So you have no objection to having that principle applied in all contracts with reference to procurement of aviation—renegotiation?

Secretary SYMINGTON. Yes, sir. Not only have we no objections, but we would very strongly advocate that renegotiation clause should be in these contracts. I would like to respectfully add to that that I think a renegotiation clause, if in our contract, should be in the contracts of all comparable procurement of the National Defense Establishment.

The CHAIRMAN. That is right.

Secretary SYMINGTON. Else the fellow who can get our business or another service's business naturally wants the other service's business because he knows he is not going to be renegotiated.

The CHAIRMAN. I thoroughly agree with you. There should be a provision with reference to renegotiation for all procurement of armed service.

Secretary SYMINGTON. Yes sir.

The CHAIRMAN. Mr. Durham.

Mr. DURHAM. Mr. Secretary, can you give us the differential in the cost in airplane-frame weight, say, in 1945 when we were in full production and at the present time in your procurement program?

Secretary SYMINGTON. The average cost per airframe pound for aircraft procurement during World War II was $19 as compared to $41.89 for the fiscal year procurement program of 2,437 aircraft. The difference in cost per pound can be partially attributed to more complex aircraft, higher material costs, and higher wage costs. However, the primary reason is the lower unit costs which resulted from procurement of about 300,000 aircraft during World War II as compared to the 2,437 aircraft in the fiscal year 1949 program.

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The CHAIRMAN. Would it embarrass you to put in the record, to acquaint the committee and the country, just exactly what is meant when you read and talk about a 70-group program? Is it so confidential you cannot tell the committee in public how many bomber groups and how many other kinds of groups you have when you use the words "70-group"?

Secretary SYMINGTON. In answer to a good many questions on the bill, we have already submitted the answers to this and a good many other questions from you.

The CHAIRMAN. All I want to know: Is it so confidential you cannot tell the committee in public, when you use the 70-group as a definition of the strength of the Air Force, what a 70-group means? How many bombing groups do you have, and how many medium bomber groups do you have? Is it so confidential you cannot tell the country about that?

Secretary SYMINGTON. We did classify it, but if you think it would be a good idea——

The CHAIRMAN. What harm is it going to do? We are not going into the mechanism; we are not going into the characteristics of the planes. What harm does it do to acquaint the country with what a 70-group means?

Secretary SYMINGTON. If you——

The CHAIRMAN. You are the one to reach that decision, and not me. For instance, we know how many ships we have. We know what the character of the ships are. We know we have airplane carriers, we have battleships, we have submarines and destroyers. Now, why could not the country know that a 70-group means so many squadrons of this type, that type, and that type? Now, is there anything confidential about that?

Secretary SYMINGTON. I do not think there should be, sir.

The CHAIRMAN. Wait 1 minute. Could you give it in major types, as has been suggested?

Secretary SYMINGTON. We can give that, sir, if you would like it.

The CHAIRMAN. Now, do you consider and your staff consider that so restricted it cannot be published?

Secretary SYMINGTON. I think some of our staff felt that way about it, but General Vandenberg and I do not feel that way about it.

The CHAIRMAN. General, what have you to say?

General VANDENBERG. Some of it was published last year, sir, in the record, and I can see no reason why the public should not know what the composition is in general.

The CHAIRMAN. Suppose you and the Secretary decide what you want to tell us about what constitutes the 70 groups, because we are going to be asked on the floor of the House.

Mr. SYMINGTON. We will give it to you now.

The CHAIRMAN. All right. Give us what you think ought to be known to the public.

Secretary SYMINGTON. In the 70-group Air Force, heavy bombardment groups—that is, the B–36——

The CHAIRMAN. You don't even have to describe that. You do not have to tell what type of plane.

Secretary SYMINGTON. All right.

The CHAIRMAN. Leave that out.

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Secretary SYMINGTON. That would be four.

In the medium bombardment group, that would be 16.

In strategic reconnaissance——

The CHAIRMAN. Leave out reconnaissance.

Mr. ANDERSON. We will not get the information if he leaves that out, Mr. Chairman.

The CHAIRMAN. All right, go ahead.

Secretary SYMINGTON. There would be a total of 6. I will not break them down, in accordance with your thought, sir.

The CHAIRMAN. Six?

Secretary SYMINGTON. Yes, sir.

Mr. ANDERSON. Pardon me, Mr. Secretary, are you speaking of squadrons or——

Secretary SYMINGTON. Groups.

Mr. ANDERSON. Groups?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Groups.

Secretary SYMINGTON. In light bombardment, there would be a total of five. Of fighters, there would be a total of 25.

Tactical reconnaissance, there would be four.

Heavy troop carriers, four.

And medium troop carriers, six.

In addition to that, there would be 22 separate squadrons for air-sea rescues, MATS, and so forth.

The CHAIRMAN. All right. That is what constitutes the 70 air group?

Secretary SYMINGTON. That is correct, sir.

The CHAIRMAN. Mr. Kilday, any questions?

Mr. KILDAY. I was just wondering how the figure that we have here of what you could procure, should $800,000,000 additional be added, compares with the figure that we hoped to reach last year. We had that itemized in the record. It was on the floor.

Can you recall what that was?

Secretary SYMINGTON. No, sir; I cannot. That would be changed somewhat because since we got the final budget figures we have immediately gone ahead to reprogram. I would like to get that figure for you and present it to you.

Mr. KILDAY. My recollection is that it was somewhere around 2,500.

Secretary SYMINGTON. Well, as you know, we are using more of our money to improve some of our planes than we thought we would—as, for example, the change in the engine picture as I mentioned—and we are also buying some more bigger planes as against smaller planes than we thought we would.

Mr. KILDAY. It is my recollection that when the President signed the appropriation bill last year he instructed the Secretary of Defense to approve the money that you wanted to commit.

Secretary SYMINGTON. That is right.

Mr. KILDAY. To what extent was it committed last year?

Secretary SYMINGTON. All of it.

Mr. KILDAY. It was all approved?

Secretary SYMINGTON. Yes, sir.

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Mr. KILDAY. I take it the position taken by those of us in Congress who have insisted on the 70 groups has been justified by the executive department.

You do not have to comment if you do not want to.

Secretary SYMINGTON. May I make this point. When the final budget came out, we have to reprogram, and that money has been approved informally by both the Bureau of the Budget and by the Secretary of Defense, but the papers have not been sent; so there is no final approval of the final reprogramming incident to going to the 48 groups.

But it has been approved in principle, and the rest has been formally approved.

Mr. KILDAY. That is all.

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. You mentioned one point there that I wish you could explain a little. I know you cannot do it in detail, but you mentioned in response to Mr. Kilday's question that you were not able to procure as many airplanes with the money you got as you testified you could.

Now, is that a pattern that has been going on ever since the end of the war, that they are getting larger and larger, or more costly and still more costly, say?

Secretary SYMINGTON. As a matter of fact, if the premise figure of 2,500 is correct, Mr. Johnson, we are pretty close. We are 2,370.

Of course, often it is better if you see where you can make major changes in an airplane to make those changes and get less airplanes, but a much better airplane. Then we come in and try to make that up in our next appropriation.

Mr. JOHNSON. Is that not the invariable experience you have had in developing every airplane?

Secretary SYMINGTON. Sure.

Mr. JOHNSON. As you go along, you see where you can better it, and also the cost usually jumps up some?

Secretary SYMINGTON. Well, prices have been rising steadily.

Mr. JOHNSON. Now, is that rule not also true in the relationship to the number of personnel you have to have?

In other words, in the bill you want so many people in your organization, or you have a top figure.

Secretary SYMINGTON. The personnel figure, has stayed much more stable. We have not changed the personnel figure, the top personnel figure for a year.

Mr. JOHNSON. Is it not true, as a general principle, that the number of men (both civilian and military) that have to take care of a squadron or a plane is increasing all the time?

Secretary SYMINGTON. I would say, if you have a bigger airplane, that you have more people, of course.

Mr. JOHNSON. Certainly.

Secretary SYMINGTON. But, if you have a bigger airplane, you buy less planes; and the net result is that you would probably have the same or a less number of people.

Mr. JOHNSON. So one offsets the other?

Secretary SYMINGTON. That is right, sir, so far as personnel are concerned.

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Mr. JOHNSON. Is that true in the new types of fighters. that you have to have more people for them?

Secretary SYMINGTON. That is an operating question. I would have to pass that to General Vandenberg.

General VANDENBERG. In general, I think, Mr. Johnson, they will remian approximately level. As the difficulty of maintaining them increases, we generally cut down. I am talking more about the big planes. In the smaller planes, although they are more difficult to maintain, we do not expect to have more people.

Mr. JOHNSON. What relationship does the civilian group that handles those planes—services them and does other types of work, including administrative work—what relationship does that have to your regular military use and so forth?

How many are there in proportion, say?

General VANDENBERG. It is in direct proportion to the number of groups generally speaking, sir, and they are generally backing up the military in depots and in the matériel command.

Secretary SYMINGTON. We could get those percentages for you, Mr. Congressman.

Mr. JOHNSON. Are they increasing? Is the ratio of civilian employees increasing to the military personnel?

General VANDENBERG. No, sir.

Mr. JOHNSON. Is it remaining about stationary?

General VANDENBERG. Approximately the same; yes, sir.

Mr. JOHNSON. All right.

I think we ought to have somewhere—maybe it is in the record—this fact, that when you have ideas as to what you want to have turned out for a certain purpose, for a fighter plane or a reconnaissance plane, how much of a change is there from the time you start with it until it is produced on the production line and has been tested and ready for action?

Secretary SYMINGTON. Well, actually you never stop changing—the question sometimes is one of minor changes instead of major changes—but the difference between airplane production and other production I have been associated with previous to my coming in the Government is that you never standardize.

You are constantly trying to buy performance at a weight, and that gives your man in the air that much better chance of living in combat. Therefore, you constantly change them.

Mr. JOHNSON. Is this a correct statement, that from the time you start on a new idea with a plane it is about 8 to 10 years until you finally get the finished product out to use?

Secretary SYMINGTON. Well. you take the B-36. The B-36 I first saw in January 1942, in wood. The B-36 this year is much better than last year. Next year it will be much better than this year. There is 8 years right there.

Mr. JOHNSON. Well, the B-29 was 9 years in the making; was it not?

Secretary SYMINGTON. I do not know the history on that, sir. I know the B-17 better. That was about 8 to 9 years.

Mr. JOHNSON. But that would be a fair figure, would it not—about 8 years to get out the finished product?

Secretary SYMINGTON. I think, Mr. Congressman, you would find it would be a little longer for the bombers than it would be for the

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fighters. I think before you went to many major modifications on fighters you would go to an entirely new airplane.

Mr. KILDAY. Is it not a little easier for a layman to understand when you say no plane, the design of which began after Pearl Harbor, participated in the last war?

Secretary SYMINGTON. That is correct, sir.

The CHAIRMAN. But at the same time, Mr. Secretary, why can the industry not, and your researchers, try to reach some yardstick as to standardization and not constantly have changes on planes which are of a certain type occurring which increases the cost?

I know something about that as far as ship construction is concerned. There was never a ship laid down where they did not charge it everytime the moon changed. That increases the cost.

Now, for instance, take as an illustration the B–36. You know what it is now. You give a contract for it. Invention is going on—research is going on and development is going on. Why can you not standardize that procurement until some worth-while change is brought about, instead of trying to add to this plane and that plane.

And everything you add eats up your money. Now you have to bear in mind money is going to be a factor in the armed services. Every dollar has to be saved. You have to have equipment. So you should not spend all your money on constant changes because some inventor or someone says: "This will be a little bit better."

Now, one that is not right up to the last minute is better than none. So I am hoping the industry and you gentlemen will not have to think you are required to make changes every time the weather changes.

Mr. JOHNSON. Is it not a fact that you have, parallel with your main construction, a modification program? You modify that very plane that the Chairman is talking about as you go along?

Secretary SYMINGTON. Well of course, we do not make all the changes that are suggested. It is like when I first went into the radio business, around 1925 or 1926. We used to get a major change in tubes or circuits about every 6 months because the industry was so new.

I think what a lot of people do not realize yet is how new this airplane industry is. Take sights. Now certainly if you are going to build airplanes to bomb, and you get a new sight that cuts your mill error in half, it is well worth while to put it in.

Then, on one of these airplanes we have been discussing a lot, we have worked out a way to get a good many more thousand feet altitude.

That may be the difference in some cases between getting to the target and not getting to the target from the standpoint of flack. And also it is almost impossible for these fighter planes to operate at these high altitudes, to maneuver, because they have not much air and they fall away.

Then you have guns, armament defense. If you come up with a radically new improved defensive situation, you may, for a relatively little amount of money—the premise always being you only build warplanes on the basis there might be trouble—you might save your whole investment in that plane by putting on it the better armament.

So those things are very carefully analyzed, Mr. Johnson, in headquarters here, with operations people, and with the matériel people, and then a decision is made as to whether or not a particular suggested change is worth while to go into production.

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The CHAIRMAN. Mr. Durham, any questions?
Mr. DURHAM. No questions.
The CHAIRMAN. Mr. Cole?
Mr. COLE. No questions
The CHAIRMAN. Mr. Price?
Mr. PRICE. No questions.
The CHAIRMAN. Mr. Norblad?
Mr. NORBLAD. Yes. Could I ask what effect this new program of the Air Forces is going to have on the Reserve part of the program? Air reserve. Will it be increased or cut down?
Secretary SYMINGTON. I think we talked about that a little bit Friday, did we not? I tried to answer your question on that.
Mr. NORBLAD. Not as far as I was concerned, no.
Secretary SYMINGTON. You mean——
Mr. NORBLAD. In the future, as to your air reserve program.
Secretary SYMINGTON. We went into those figures I thought last Friday, but I would be very glad to have General Quesada give them to you again if you would like them.
Mr. NORBLAD. I was absent during a portion of the hearings. I may have missed them.
Those figures will show up in the hearings, I understand, from Mr. Van Zandt.
The CHAIRMAN. Any other questions?
Mr. NORBLAD. No.
The CHAIRMAN. Mr. deGraffenried?
Mr. DEGRAFFENRIED. No.
The CHAIRMAN. Mr. Gavin?
Mr. GAVIN. No questions.
The CHAIRMAN. Mr. Van Zandt?
Mr. VAN ZANDT. No.
The CHAIRMAN. Mr. Doyle?
Mr. DOYLE. No.
The CHAIRMAN. Mr. Elston?
Mr. ELSTON. No.
The CHAIRMAN. Mr. Anderson?
Mr. ANDERSON. Mr. Chairman.
The CHAIRMAN. Yes, sir.
Mr. ANDERSON. If I may, I would like to ask one question which may be a little aside from the point under discussion this morning, but it is interesting to me and I think would be interesting to the committee.
On December 7 last, I was in Honolulu. There was a lot of talk among the people there about, I think, one of your B–36's arriving over Honolulu at extremely high altitude, dropping an assimilated load of bombs and returning to the mainland. Is it true that that flight was made and it was undetected?
Secretary SYMINGTON. I will let General Vandenberg answer that question.
General VANDENBERG. I believe it is.
Mr. ANDERSON. It was not detected?
General VANDENBERG. No, sir.
Mr. ANDERSON. It arrived at extremely high altitude from the mainland?
General VANDENBERG. Yes, sir.

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Mr. ANDERSON. Discharged an assimilated load of bombs and returned undetected?

General VANDENBERG. Yes, sir.

Mr. ANDERSON. All right.

General VANDENBERG. The authorities, the proper authorities in Honolulu knew that the airplane was going to arrive, but because of the mission, we did not let it out.

Mr. ANDERSON. I mentioned that because——

General VANDENBERG. I presume you are talking about the aircraft-warning system there.

Mr. ANDERSON. That is correct.

General VANDENBERG. The aircraft-warning system that we have advocated will correct that situation, although probably not in Hawaii, again. The places that we have to defend with the money that we have available in order to get antiaircraft warning equipment and fighter defense have to be parceled out to those particular places where the Joint Chiefs feel is our first priority. It is expensive. It takes a lot of manpower.

Mr. ANDERSON. Thank you very much.

The CHAIRMAN. Now, Mr. Secretary, I would like for you to answer this question: Suppose Congress should adopt a program to level off at 57 instead of 70, what would be the annual maintenance cost of a 57 program?

Secretary SYMINGTON. A curbstone guess—I would rather check that, sir, and give you the facts—would be that it would be around 6½ billion dollars.

The CHAIRMAN. Six and a half billion dollars annually?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. And with a 70-group program leveled off, it will be about $7,000,000,000?

Secretary SYMINGTON. Seven and a half, sir.

The CHAIRMAN. Seven and a half?

Secretary SYMINGTON. Yes.

The CHAIRMAN. Now, Mr. Hébert, any questions?

Mr. HÉBERT. No, sir.

The CHAIRMAN. Mr. Winstead?

Mr. WINSTEAD. No.

The CHAIRMAN. Mr. Havenner?

Mr. HAVENNER. No.

The CHAIRMAN. Now, Mr. Secretary, something was said about whether or not you are increasing your employees on account of a building program or procurement program. Now, I submitted to you a series of questions and one of them was: Give the number of civilian employees in the Department of Air Force in Washington. You answered: As of October 31, 1948 you had 2,702 civilian employees at headquarters.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. And the civilian employees on duty in Washington Metropolitan District, as of October 31, 4,657.

Give the number of civilian employees of the Air Force in continental United States, and you answered: Air Force, civilian employees in continental United States, other than those on duty in headquarters, Washington, as of October 31, was 125,659. And the Air Force civilian

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employment in continental United States, other than those on duty in Washington, Metropolitan area, 123,704.

Give the number of civilian employees in the Air Force outside the United States, and you answered: Air Force civilian outside continental United States, 27,391.

Now, I would like to know if you are working under the Byrd Act with reference to employees, or is the Byrd Act not applicable to the employees in the Department?

Secretary SYMINGTON. No, sir, the Byrd Act is applicable.

The CHAIRMAN. Is applicable.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Then, you see no objection to putting it in this bill that the Byrd Act is still applicable to employees not only of the Air Force, but the Army and the other establishment, too?

Secretary SYMINGTON. Well, of course——

The CHAIRMAN. It does not embarrass you, does it?

Secretary SYMINGTON. Except the less limitations we have on operation, why the better off we are.

The CHAIRMAN. There is no doubt about it. That is the reason we want a little limitation because you might use all of your money for civilian employees when we want some airplanes.

Now we will read the bill section by section——

Secretary SYMINGTON. Mr. Chairman, could I say one more thing about that?

The CHAIRMAN. Yes, sir.

Secretary SYMINGTON. You know, when the War Department and the Air Force separated, it was done under extraordinarily amicable conditions. Nevertheless, it did create a problem because constantly the things that came into the Air Force were in the War Department. I remember, for example, that there were 176,000 graded civilian employees allowed for the War Department, and of the 176,000, 126,000 stayed in the Army and 50,000 came to the Air Force.

Now, that is not in any sense a criticism of the Army because a great deal of the work that requires graded civilians they do for us and properly so, to save money, such as in the Quartermaster Corps and engineers. On the other hand, we believe that the Byrd law at these levels is pretty tough on us from the standpoint of what we need. We have not yet built up our own picture on the civilian employees and the Byrd law embraced the over-all picture. So long as you mentioned it, I would like to present that problem as far as we are concerned; and incidentally, and not in criticism but to present the problem, we have only increased our total number of graded employees from the Army to the Air Force about 1,700 since the original 50,000 split that was agreed to between the Army and the Air Force some 18 months ago. We are not in very good shape when it comes to civilian employees.

The CHAIRMAN. Well, with a limited amount of money your main objection should be equipment, first. You were divorced from the Department of the Army about a year and a half ago and in that length of time, from the figures I just read, it does not look to me that you were too much embarrassed by being able to put up a pretty good organization.

Secretary SYMINGTON. We have had some exemptions that have helped.

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The CHAIRMAN. Well, we want to begin to stop all these exemptions and have it dealt right across the table so we will know exactly what we are doing and where uor money is going.

Mr. KILDAY. Mr. Chairman, may I develop one point, if the Secretary and General Vandenberg are willing to discuss it.

What is the position of the Air Force as to the increase necessary in the Army if you go from 48 groups to 57 groups?

Secretary SYMINGTON. Well, General Ruffner gave me some testimony this morning. General Bradley plans to change his testimony somewhat and I would rather not comment on that until we have studied his testimony.

I would like to say, Mr. Kilday, that our relationship with the Army on those matters is a very good one. I would rather have them say, because they do the servicing as against us saying what it requires. Last year we got along with them very well and I am sure this year we will reach agreement.

Mr. KILDAY. We, of course, do not want to keep you from getting along, but we are fearful we may be asked as to that when get on the floor.

Secretary SYMINGTON. Yes, sir. We have some new testimony from the Army on that, but I would rather have them give it than have us give it.

Mr. KILDAY. I think the two of you will get together on it.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. And in that way certain provisions of the draft may have to be invoked. With the increase of authorization of $800,000,000, it might necessarily follow you have to increase the Ground Force.

Mr. ELSTON. Mr. Chairman, I would like to ask one question.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. Mr. Secretary, if you are compelled to cut your appropriations below the 70-group program down to a 48-group program, would it prevent you from acquiring some bases that you consider essential to the security of the Nation?

Secretary SYMINGTON. Well, we get back into the same discussion that we had Friday and that is what the military and the Air Force consider is essential to security, sir, is not paramount, as I see it. Anybody against us could win in two ways. The first would be in a battle, and the second would be by forcing us to spend more money than the country could afford, getting into deficit financing.

Although naturally we are going to have less bases if we have 48 groups instead of 70, with the premise that our part of the show is only a relatively small part, we are glad to support the 48-group program.

Mr. ELSON. I take it, then, you would have to do without some bases that you would like to acquire.

Secretary SYMINGTON. Yes, sir; we would.

The CHAIRMAN. Now, to sum it up, then if Congress stays within the over-all budget of $42,000,000,000 and gives us $800,000,000 more, that will be a continuation of the program that we laid down last year in a very satisfactory manner, would it, as far as bearing in mind the economic stability of the country?

Secretary SYMINGTON. Well, it would give us more groups.

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The CHAIRMAN. Well, going on that basis, how long would it be before we would reach the 70 group? How many years?

Secretary SYMINGTON. That would be a little hard to figure, sir, but it would extend the time.

The CHAIRMAN. Well, how long?

Secretary SYMINGTON. Well——

The CHAIRMAN. Well, would it extend over a 5-year or 7-year period?

Secretary SYMINGTON. It would depend on what you gave us next year, and so forth.

The CHAIRMAN. All right. Let us assume that Congress levels off at $2,280,000,000 for procurement; how many years before you get your 70 group?

Secretary SYMINGTON. Well, we have had a little informal discussion here. General Rawlings, who probably knows more about it than anybody, thinks 1954.

The CHAIRMAN. Let us get that straight. If Congress adopts this policy now to make available $2,280,000,000 for procurement, by 1954 you will have reached your 70 air group, is that correct?

Secretary SYMINGTON. That is right, at the end of the fiscal year 1954, sir.

The CHAIRMAN. And at that time the annual budget to support it will be in the neighborhood of $7,500,000,000.

Secretary SYMINGTON. At present price and costs.

The CHAIRMAN. I think we all understand.

Secretary SYMINGTON. That is a guesstimate, Mr. Chairman. We would like to check back on that.

The CHAIRMAN. What?

Secretary SYMINGTON. That is a guesstimate. We would like to check back on it.

The CHAIRMAN. All right. I think you guessed pretty well.

Mr. VAN ZANDT. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. VAN ZANDT. Did I understand you to say we were going to start reading the bill?

The CHAIRMAN. Yes, sir.

Mr. VAN ZANDT. Would it not be well at this time if we listened to the representatives of the National Guard and the Reserve?

The CHAIRMAN. When we reach that point in the bill relating to them, we will give them an opportunity. We cannot do but one thing at a time. We have one witness. Let us exhaust him before we exhaust someone else.

Mr. GAVIN. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. GAVIN. Mr. Secretary, are all our military bases equipped with GCA?

Secretary SYMINGTON. No, sir.

Mr. GAVIN. How many of them are?

Secretary SYMINGTON. I could not answer that question.

General VANDENBERG. I would guess, sir; that there are about seven in the continental United States and all of the fields in the Berlin airlift are equipped with it and one in Tokyo.

Mr. GAVIN. Would you think it is very important that all of our military fields be equipped with that kind of control approach?

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General VANDENBERG. Yes, sir, I think all of the possible radar aids to navigation and to landing that save lives that we can get are essential.

Mr. GAVIN. It is important that that question be carefully studied.

The CHAIRMAN. Now, General Vandenberg, before we start to read the bill, I would like for you to present your views, if you have any to present to the committee.

General VANDENBERG. Mr. Chairman, I have a prepared statement that I could read if I may.

The CHAIRMAN. Have all members copies of it? Let all members have a copy of the statement.

Before we start with General Vandenberg, any questions any members in a general way want to ask the Secretary?

All right, now. Go ahead and make a picture of the general now.

(Pictures taken.)

The CHAIRMAN. All right.

General, the committee will be pleased to have you make any comment that you desire in regard to H. R. 1437. Let there be order in the committee now.

General VANDENBERG. Mr. Chairman, the purpose of title II of this legislative proposal is to establish in law the composition of the Air Force and certain other ancillary authority.

Legislation embodying the intent of the Congress with respect to composition of a military service is necessary as guidance for those who administer that service, and is a means of insuring continuity in the development of the service.

Such legislation also provides a broad long-term authorization upon which the service may base its periodic estimates of requirements. H. R. 1437 defines the Air Force as to size, components, and general activities.

The bill establishes, therefore, the basis upon which the Air Force could plan its development for the years to come. The Air Force, created as a separate military service by the National Security Act of 1947, does not now have adequate statutory basis for its nature, scope, and composition. This legislation would provide that basis.

It would further provide the necessary procurement authorization to carry out the purposes of the act and authority for the Air Force to conduct research and development programs pertaining to its own activities.

During the past year two independent civilian agencies, the President's Air Policy Commission and the Congressional Aviation Policy Board, made exhaustive studies of the requirements of the United States for a minimum Air Force capable of providing, in conjunction with the other services within the National Military Establishment, for the air power they considered necessary for the national security.

The Air Force believes that authorization should be enacted to provide the basis for such an Air Force. Only by enactment of legislation of this nature can an objective be established for that Air Force considered requisite to our national security.

In the light of world conditions, in case of aggression against the United States, the major tasks to be undertaken by the Air Force in the defense of our country are clear:

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First. The delivery of an immediate and powerful strategic air offensive against the basic sources of our enemy's war-making capacity.

Second. The defense of the United States and our essential bases against attack by air.

Third. Tactical support of the Army and Navy in exploitation of the opportunity presented through successful prosecution of the first two tasks.

It is the strong conviction of the Air Force that these tasks are basic undertakings common to all of the various possible strategic situations that may exist now or in the foreseeable future in the event of war.

The success of these operations by the Air Force will gain for the Nation a situation in which the combined power of all arms could be employed most economically and with the most favorable opportunities for success and a period of time for the wartime mobilization of our resources. These three basic tasks may be considered therefore as the measures necessary to avoid losing the war.

The task of gaining and maintaining air superiority, the winning of the air battle, is a requisite to surface operations. No country can survive for long when the air above it is exploited freely by an enemy.

The attainment of this objective permits our surface forces to operate at places and times of their own choosing and under the most favorable conditions.

The basic requirements of the peacetime Air Force are twofold, and in considering one we must not lose sight of the other. We must have in our peacetime Air Force not only the capabilities of combat-ready forces necessary for defense, for the initial strategic offensive, and for tactical support, but we must also have the platform to permit us to expand to the forces which may be required to exploit the initial advantages gained by the air offensive.

The initial operations must have in being a back-up of trained and equipped forces. This back-up must be supported by an aircraft industry capable of rapid expansion.

Provision for meeting these requirements would be the strongest deterrent to those who might destroy the peace of the world through aggression and are the most certain safeguards of our security if war should occur.

As regards this bill: Section provides that the Air Force of the United States shall be authorized 70 Air Force groups and 22 separate Air Force squadrons, supplemented by 61 Reserve groups, together with necessary supporting elements.

This is the organization recommended by the Air Force as a basis for planning. This plan has my firm approval and my predecessor as Chief of Staff of the Air Force, Gen. Carl Spaatz, likewise approved the plan. I recommend, however, that the bill be amended by the addition of the word "Regular" in line 19, page 4, before the words "Air Force," so that the phrase will read "70 Regular Air Force groups."

The Air Force authorized by this bill is of the same general character as that recommended independently by both the President's Air Policy Commission and the Congressional Aviation Policy Board.

I would like to emphasize that the language of this section is broad

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enough to cover either the present type of organization of the civilian components or any organization which may be adopted by the Congress as a result of the Gray Board's recommendations. The organization of either the Air National Guard or the Reserve need not be affected by this legislation.

Section 202 defines the groupings of officers, warrant officers, and enlisted persons which make up the 502,000 over-all military strength, which is the same strength figure set up for the Air Force in the Selective Service Act of 1948.

This total figure includes 75,300 officers, including warrant officers, of which 35,000 may be Regular Air Force officers and 4,800 Regular Air Force warrant officers, and 426,700 enlisted personnel of all grades.

The CHAIRMAN. General, one minute. If you are going to read and explain each section, I think it might be a good idea to read them and then comment on them as they are read.

General VANDENBERG. Very well, sir.

The CHAIRMAN. Now, is there any questions of a general nature that anyone wants to address to the distinguished general? If not, then let the staff, Mr. Blandford, read section 201.

Mr. JOHNSON. Could I ask one question before you read that?

The CHAIRMAN. All right, Mr. Johnson.

Mr. JOHNSON. That ratio of 75,000 over-all, including 35,000 of the Regular force, is that about the ratio you are maintaining now in your office make-up? About half of them are non-Regulars?

General VANDENBERG. No, sir. 18,000 Regulars now.

Mr. JOHNSON. How many of the other kind?

General VANDENBERG. 34,000 Reserves, sir.

Mr. JOHNSON. Almost 2 to 1 in favor of temporary officers?

General VANDENBERG. Yes, sir.

The CHAIRMAN. All right. Now read section 202, Mr. Blandford.

Mr. BLANDFORD. 201 or 202?

The CHAIRMAN. Section 201.

Mr. BLANDFORD (reading):

SEC. 201. The United States Air Force shall have an authorized strength of 70 Air Force groups and 22 separate Air Force squadrons, supplemented by 61 Air Force Reserve groups, together with necessary supporting and auxiliary units. The Air Force of the United States is authorized to consist of the number of organizational units, with their installations and supporting and auxiliary elements, including tactical, administrative, logistic, air transport, and training, as may be determined by the Secretary of the Air Force consistent with the numbers of personnel and aircraft hereinafter authorized.

The CHAIRMAN. Now, General, any amendments you propose to section 201?

General VANDENBERG. Yes, sir, the one I previously stated, on line 19, page 4, before words "Air Force" so it will read "70 Regular Air Force groups."

Mr. KILDAY. Did not the Secretary suggest an amendment this morning as to airframe pounds?

Secretary SYMINGTON. Yes. It goes in 203, Mr. Kilday.

The CHAIRMAN. Yes, sir.

You have that, Mr. Blandford?

Mr. BLANDFORD. Yes, sir, I have it.

The CHAIRMAN. Any objection of any member of the committee to inserting the amendment proposed by General Vandenberg?

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Mr. KILDAY. I wish we would get rid of that word "Regular." We never used that word in the National Defense Act. We always referred to the United States Army and the Army of the United States or Reserve.

I wish we could come to some understanding, both as to the Army and the Air Force.

General VANDENBERG. Could I comment on that, Mr. Kilday. The reason for that is this: Every time we get into conversation about it either in Congress or otherwise about the 70-air-group program, there is some doubt about it.

The 70-air-group program consists of regular units and civilian components. We are trying to differentiate here for people who have that confusion what we are talking about in this particular phase, because the two are exactly the same.

We call it a 70-group program which includes all of the civilian components and the regular components here.

Mr. KILDAY. We never had any trouble before in distinguishing between the Regular Army of the United States and the Army of the United States.

General VANDENBERG. The purpose was for clarification, and if it does not succeed in doing that I would withdraw my recommendation.

Mr. KILDAY. I have no objection to it.

The CHAIRMAN. Under this proposal we will have a Regular Air Force of 22 separate groups, is that correct?

Mr. BLANDFORD. 70 groups, 22 seperate squadrons——

The CHAIRMAN. Yes, 70 Regular Air Force groups, 22 separate Air Force squadrons, supplemented by 61 Air Force Reserves.

Now that constitutes the Air Force, is that correct?

General VANDENBERG. Yes, sir.

The CHAIRMAN. All right.

Mr. JOHNSON. Mr. Chairman, could I ask a question?

The CHAIRMAN. Yes, sir.

Mr. JOHNSON. General, down there you used the words "auxiliary units." In doing that do you refer to the Civil Air Patrol or is the Civil Air Patrol considered part of the Air Force? That is line 22.

General VANDENBERG. There are things such as base groups, sir, that are necessary. That includes such items as that.

The CHAIRMAN. All right.

Mr. JOHNSON. Well, in the last Congress we authorized the Civil Air Patrol and I understand that the Regular Army officers are in charge of it.

General VANDENBERG. That is right, sir.

Mr. JOHNSON. Is that comprehended in that word "auxiliary" or is that group of men in the Regular Air Force?

General VANDENBERG. I would say, sir, that that would not come under that.

Mr. JOHNSON. How many of the Regulars are occupying their time with handling the Civil Air Patrol?

Mr. McCONNELL. Sixty-nine Regular officers.

Mr. JOHNSON. That is all.

General McCONNELL. Yes, sir.

Mr. JOHNSON. And then some civilians, I suppose?

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General McConnell. Sixty-nine Regular officers, 72 enlisted men, and 52 civilians.

The Chairman. Now, supplemented by 61 Air Force Reserve groups. That is made up by National Guard air groups; is that it?

General Vandenberg. Yes, sir, and Reserve.

The Chairman. All right.

Now give a little information to the committee as to how strong you are today in that category. How many National Guard air groups have you?

General Vandenberg. May I have General Quesada answer that. He is a specialist on that.

The Chairman. Come around here, General. Tell us something about your National Guard Air Force.

General Quesada. The program provides for 27 National Guard groups.

The Chairman. That is your program in existence today?

General Quesada. Yes, sir.

The Chairman. It provides for 27 National Guard groups?

General Quesada. And 31 groups of the Air Force Reserve.

The Chairman. Thirty-one Reserves?

General Quesada. Thirty-four in total.

The Chairman. Thiry-four?

General Quesade. Of the Reserve.

The Chairman. Now, of the 27, how many have been created?

General McConnell. Twenty-five.

General Quesade. Twenty-five.

The Chairman. Then, we have 25 National Guard air groups in existence today?

General Quesade. Yes, sir.

The Chairman. Now, where are they located? How do you determine where you put them?

General Quesade. Well, we are trying to put one squadron in each State. We could give you a more accurate break-down from records that we have here.

The Chairman. Well, read the record and let us see what you are doing about it.

Come up here, somebody, and read it into the record.

General McConnell. Mr. Chairman, those are dependent upon two things: The first is the security of the United States. We try to locate them strategically as far as security of the United States is concerned because most of them are fighter groups to be used for the defense of the United States in case of attack.

The Chairman. And you have located 25 of them?

General McConnell. They have actually located 26. One has just come in.

The Chairman. Twenty-six?

General McConnell. Yes, sir.

The Chairman. Now does that mean that there is more than one group in certain States?

General McConnell. That may be true. There may be one group headquarters in more than one State, although that is not at the present time so. We offer these to the States.

The Chairman. That is right.

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General McCONNELL. Where we think they ought to be located. In the event the State is able to come up with the number of personnel and accept the burden of their portion of the expense involved in establishing the National Guard outfits, then we go ahead and approve them.

In the event the State that we offer it to from a strategic standpoint is not able to accept it because probably it has already another unit or two there, then we offer it to the next best from a strategic standpoint.

That is the way they are located.

The CHAIRMAN. Then, it is left entirely to the States as to whether or not they accept the group that you are referring them?

General McCONNELL. That is correct, sir.

The CHAIRMAN. The Air Force here has no authority to require a State to accept them?

General McCONNELL. That is right, sir.

The CHAIRMAN. And the support of it is dependent upon a contribution from the State as well as a contribution from the Government?

General McCONNELL. Yes, sir. The State makes a very small support of it actually in appropriations.

The CHAIRMAN. Now, have you more applications for the establishment of the Air National Guard than you are actually putting in? Are you turning down any States or hesitating to put any in the States that are making application for it?

General McCONNELL. I think there are only two instances where States have applied for an additional squadron where we have not put additional squadrons.

But that is because the troop basis of the National Guard as presently set up only permits a total of 27 groups in the war plan required for the war plan.

Now, in the event that that number were to be augmented, I believe we could go to the States and ask them if they would accept an additional commitment.

And I believe we could get them to take an additional commitment for as many as 12 more squadrons.

The CHAIRMAN. Now, put in the record where those 25 are located.

General McCONNELL. Twenty-six, Mr. Chairman, located as follows: New York, N. Y.;[1] Philadelphia, Pa.;[1] Chicago, Ill.;[1] Augusta, Maine; Boston, Mass.; Hartford, Conn.; Buffalo, N. Y.; Newark, N. J.; Washington, D. C.; Atlanta, Ga.; Nashville, Tenn.; Columbus, Ohio; Indianapolis, Ind.; Louisville, Ky.; Detroit, Mich.; Milwaukee, Wis.; St. Louis, Mo.; Des Moines, Iowa; St. Paul, Minn.; Dallas, Tex.; Tulsa, Okla.; Denver, Colo.; Portland, Oreg.; San Francisco, Calif.; Los Angeles, Calif.; Birmingham, Ala.

The CHAIRMAN. Now you say your war plans only call for an Air National Guard of 27, is that correct?

General McCONNELL. Yes, sir.

The CHAIRMAN. Is that correct?

General McCONNELL. That is correct, sir.

The CHAIRMAN. All right.

Then the balance of your reserve is strictly Reserve, is that it?

General McCONNELL. Yes, sir; that is correct.

[1] Light bomb groups—all other are fighter groups.

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The CHAIRMAN. Now give the committee some information on how you establish a Reserve group. Who establishes it and what do you do with it? Do you put it on paper and forget it or do you put it in actual being?

General MCCONNELL. When the war plan is revised you determine how big the Regular Establishment will be as required to support the war plan and as limited by the appropriations for the Regular Establishment.

The National Guard having been placed in second priority as a portion of the defense force of the Air Force at 1946, we determined what we believed was the maximum the National Guard could accept and that came out to 27 groups.

The difference between what the Regular Air Force could furnish and what the National Guard could furnish was made a requirement upon the Air Force Reserve.

The requirement in consonance with that war plan was too high for the Air Force Reserve to meet considering two capabilities: First the capabilities of the Reserves themselves to participate in a program that is that broad, and second the capabilities of securing sufficient appropriations and equipment to implement a program that is that broad.

Then you actually have a gap between your war plan requirements and what you will actually have on M-day due to the fact that you cannot support the required number of Reserves.

Now we established the required number of Reserves as 148,000 in the Organized Reserves and they were to be divided into units. And we established the units as being a total of 34 groups, divided into different types of groups as to where they would be required for deployment from M-day until M plus a certain number of months, at which time the people could come in from civilian life and make up the other necessary groups and we would not have any requirement for training Reserves past a certain period of the war.

We were not able to put the equipment on those groups. So where we have them organized, they are organized only on paper and they do not have combat equipment on them at this time.

The CHAIRMAN. Then, as a matter of fact, you have not any in being; it is just on paper?

General MCCONNELL. They are on paper and will be on paper until about the 1st of July of this year, at which time we will have 27 of them who will be in being. They will be in being, though, and equipped with one-fourth of the equipment which they are supposed to have.

The rest will be equipped purely with training-type equipment.

The CHAIRMAN. And you have sufficient money in the appropriation from last year and what is in this to put 27 in existence?

General MCCONNELL. With one-fourth of the equipment.

The CHAIRMAN. With one-fourth of the equipment.

General MCCONNELL. Yes, sir.

The CHAIRMAN. Well, that would be a considerable improvement over the situation today, will it not?

General MCCONNELL. That is correct, sir.

The CHAIRMAN. Because today it is all on paper.

General MCCONNELL. That is correct, sir.

The CHAIRMAN. Any questions from any members of the committee in regard to the National Guard or the Reserve?

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Mr. KILDAY. Mr. Chairman.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. Of course the present plan constitutes 61 groups in the Guard and Reserve combined?

General MCCONNELL. That is correct, sir.

Mr. KILDAY. And this bill does not propose to augment that.

General MCCONNELL. That is right, sir.

Mr. KILDAY. But we have augmented the Reserve of the Army and the National Guard of the Ground Forces.

General MCCONNELL. That is correct, but in the Reserves you do not need in the National Guard and the Reserves any more groups than you have to have from the time the war starts up until the time you could organize the groups and get the equipment on them from production and get the people out of civilian life to man them and have the people trained. So you have a striking force which the Regular Air Force and a portion of the Reserve and the National Guard groups which we referred to altogether as Reserve groups——

Mr. KILDAY. Anyway, the Department does not recommend that there be a comparable increase such as they have done with the Army?

General MCCONNELL. No, sir; that is correct.

The CHAIRMAN. Now let me clear this one thing up. I have been reading something about a board down there known as the Gray Board. I have not seen any reports from them. Is there anything in the bill that changes the set-up from what it is now?

General MCCONNELL. No, sir; there is nothing in this bill which proposes any changes in the present set-up.

The CHAIRMAN. There is nothing in this bill that carries any recommendations of the Gray Board in regard to federalization of the Reserve?

General MCCONNELL. There is not anything in this bill.

Mr. KILDAY. It is the opposite, as a matter of fact.

The CHAIRMAN. That is right.

Mr. KILDAY. It gives it statutory existence.

The CHAIRMAN. Then, as a matter of fact, we are establishing this under State jurisdiction, just like the Ground Forces, is that correct?

General MCCONNELL. In the terms of this bill the language says "61 Reserve groups."

The CHAIRMAN. That is right.

General MCCONNELL. That does not mean 61 groups of the United States Air Force Reserve. Neither does it mean 61 groups of the Air National Guard of the United States. It means a total of 61 groups between the two of them.

The CHAIRMAN. That is right. So that question is not involved in this bill.

General MCCONNELL. Not involved; no, sir.

The CHAIRMAN. All right.

Any questions of any other members?

Mr. ELSTON. Mr. Chairman.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. General, you indicated that by July 1 these organizations, Reserve and National Guard organizations, would have about one-fourth of their equipment. Is it planned that they have modern equipment such as jet-propelled planes and the latest types of planes, or are they going to be required to use obsolete equipment?

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General McConnell. Sir, that depends entirely upon when the war plan calls for the unit to be committed to combat. In the event the unit is to be committed to combat at an early date, then it is equipped within the limits of the appropriations and the limits of the productive capacity.

It is then equipped with first-line aircraft. Under the present plans, under the 48-group program, we would have equipped 11 of the National Guard groups which were specifically designated for immediate combat with jet aircraft.

That would have been done in 1952. At present we have five of those National Guard groups being reequipped with jet aircraft. The groups which will come into combat later will get correspondingly a later type or more obsolete aircraft and the ones which will come in still later will have a still more obsolete aircraft until you get down to the last ones who come in who will have only sufficient aircraft and equipment to permit them to maintain their proficiency so that when the equipment becomes available in time of war they will be ready to pick it up and go off with it.

The Chairman. Any further questions?

Mr. Durham. Do you set these groups up on the existing fields of operation, wherever you have the Regular forces?

General McConnell. I did not understand that question.

Mr. Durham. Do you set these groups up on the existing fields where we have at the present the operations of the Regular Army?

General McConnell. In some instances they are and in some instances they are not, sir. It depends on the proximity of Reserve population. For example, we have a big establishment at Roswell, N. Mex., but there is no Reserve population in Roswell. Therefore we have to establish it——

Mr. Durham. Especially in these colleges in my section, you send them down there and then they have nothing to operate with.

Secretary Symington. Mr. Chairman, I would like to make one observation on this Reserve picture.

Each year, when the money is cut, it works out worse for the Reserve picture than for any part of the Air Force. I think our problem has been primarily a problem of money over a period of years in the Air Force Reserve.

The Chairman. Mr. Cole.

Mr. Cole. Mr. Chairman, if the Department will put in the record the location of the 27 or 25 Reserve units that it is expected to be activated——

Secretary Symington. Twenty-six.

Mr. Cole. Twenty-six, or whatever it is.

Mr. Van Zandt. Mr. Chairman.

The Chairman. Mr. Van Zandt.

Mr. Van Zandt. I wonder if it would not help us to have possibly a comment from the representatives of the National Guard or Reserve officers. We have the Army side of it and the Air Force side of it. Now let us take the Reserve side of it.

The Chairman. We are going to give them a full hour or two of it. Let us not mix it up. Let us finish with the Department. Then we will hear from General Reckord.

We are not going to slight the general.

Mr. Johnson?

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Mr. JOHNSON. I wonder if you could put in the record the number of nonpaid civilians working in the Civil Air Patrol. Or if you have it, you can give it to us now.

General MCCONNELL. I can give you that information.

Mr. JOHNSON. If you do not have it, you can put it in the record. That is all we want, the nonpaid.

General MCCONNELL. The members of the Civil Air Patrol themselves?

Mr. JOHNSON. Yes, sir.

General MCCONNELL. To be accurate, they are as follows:

	Actual	Planned fiscal year 1949	Ultimate
Senior	131,000	150,000	250,000
Cadet	28,000	70,000	160,000

The CHAIRMAN. Mr. Norblad.

Mr. NORBLAD. General, is there any joint use of facilities between the Air Reserve and the Naval Reserve? Are you working absolutely independent one of the other?

General MCCONNELL. No, sir; we are not working independently of each other.

Mr. NORBLAD. Well, is there any joint facility you are using together?

General MCCONNELL. There are several cases where we are using joint facilities not only with the Air Force Reserve and the Naval Air Reserve, but also with the Air National Guard and the Naval Air Reserve. It depends, again, upon the adjacency to the facility of suitable reserve population.

Mr. NORBLAD. Well, would it be the same Reserve population for both?

General MCCONNELL. That is right.

Mr. NORBLAD. I mean there would be a city in both cases?

General MCCONNELL. We just finished with the negotiations with the Navy where we occupy Niagara Falls jointly. We occupy Birmingham jointly, and we have gone further than that, to the extent that we do not only occupy the facilities jointly, but we used each other's.

For example, at Birmingham we mess everybody and the Navy houses everybody. They use our operations set-up. We use their ammunition storage dump.

There are several instances of that not only between the Air Force Reserve at the Naval Air Reserve, but the Air Guard and the Navy Air Reserve.

The CHAIRMAN. Any further questions on section 201? If not, let Mr. Blandford read section 202.

Mr. Blandford:

Authorized personnel strength. Section 202. The Air Force of the United States is hereby authorized an active-duty strength of 75,000 and 300 officers, including warrant officers (of which number 35,000 may be Regular Air Force officers and 4,800 may be Regular Air Force warrant officers), and 426,700 enlisted persons, which numbers shall be exclusive of such 1-year volunteers for training as authorized by the Congress, officer candidates, aviation cadets, and personnel of the reserve components on active duty for training purposes only.

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The CHAIRMAN. Now, General, what is the present-day strength in personnel in the enlisted force of the Air Corps?

General VANDERBERG. 357,364, sir.

The CHAIRMAN. 357,000.

Now, if we grant this $800,000,000, how much will you have to increase your present 357,000 in the enlisted personnel?

General SMITH. The increase from 357,000 to 364,000——

The CHAIRMAN. Then you would increase it to——

General SMITH. No sir, from 357,000 to 365,000, the present strength, it would be increased to 426,700 under the 70-group program.

The CHAIRMAN. To 426,000. Now, how soon can you bring up your strength from 357,000 to 426,000? Can you do it in time to get the planes?

General SMITH. If I may be sure that I was correct, sir, we were talking about what we would need to go to under H. R. 1437, is that correct?

The CHAIRMAN. No, I asked the general what his present strength was and he said it was 357,000.

General SMITH. Yes sir.

The CHAIRMAN. And that is what it is today.

General SMITH. Yes sir.

The CHAIRMAN. Then I asked if we add $800,000,000 to it, what would your strength be to take care of that additional $800,000,000 more?

General VANDENBERG. Mr. Chairman, they have not broken that down between officers and men. May we get that and put that in the record?

The CHAIRMAN. All right. You break it down and put it in the record and give us a memo on it.

	End, fiscal year 1950	Average, fiscal year 1950 (man-years)
Commissioned officers	60,798	58,120
Warrant officers	2,600	2,600
Airmen	386,602	379,280
Total [1]	450,000	440,000

[1] Excludes personnel for Operation Vittles.

Secretary SYMINGTON. It was 412,000 with 48 groups and 450,000 at the end of the year with 57 groups.

The CHAIRMAN. Your figure 357,000 includes officers, warrant officers, and everything else?

Secretary SYMINGTON. That is correct.

Mr. KILDAY. That is 38,000 over all, is it not?

General RAWLINGS. No, sir.

Secretary SYMINGTON. The 357,00 is enlisted men only, Mr. Chairman. You understand that, sir.

The CHAIRMAN. That is right. All right.

Mr. KILDAY. Did you say you would have to go from 412,000 officers and men to 450,000 officers and men?

Secretary SYMINGTON. End of year strength.

Mr. KILDAY. A total increase of 38,000 officers and men.

Secretary SYMINGTON. That is right, sir.

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General VANDENBERG. To answer your question, Mr. Chairman, as to how soon we could get that, we can immediately start opening recruiting and get to it very shortly.

The CHAIRMAN. Anyhow, you could build your force up as soon as you could get the equipment.

General VANDENBERG. That is right.

The CHAIRMAN. Or before?

General VANDENBERG. Sooner; yes.

The CHAIRMAN. Now let us see. Has anyone any question on section 202? Are there any amendments you are offering to section 202?

General VANDENBERG. No, sir.

Mr. COLE. Mr. Chairman, I want to offer an amendment to 202, to make it comply to the earlier section relating to the Army with respect to the 1-year enlistees, so that it will read: "One-year enlistees as are or may be authorized by law" instead of "one-year volunteers for training as authorized by the Congress."

The CHAIRMAN. Any comment on that, General?

General VANDENBERG. May General Edwards answer that, sir?

General EDWARDS. If I understand your question, Mr. Cole, it is why we exempt the 1-year enlistees from the total figures.

Mr. COLE. No; the words that you used to describe them, is all. You call them 1-year enlistees for training, when as a matter of fact they are not. They are 1-year enlistees for service. The only limitation is they cannot be sent out of the United States for service.

General EDWARDS. That is right.

Mr. COLE. So we should not in our law refer to them as enlistees for training, which they are not.

General EDWARDS. Of course, we have a very limited use from them for 1 year. By the time they finish their recruit training, they have already been in the service for perhaps 15 weeks and——

Mr. COLE. At any rate, as far as the law goes, we should call them what they are: 1-year enlistees for service.

The CHAIRMAN. Yes; service instead of training.

Mr. Durham.

Mr. DURHAM. At the present time, what is your backlog on present applications from Reserve officers requesting active-duty assignments? Can anybody give that?

General EDWARDS. Would you mind repeating that, please, Mr. Durham?

Mr. DURHAM. Your applications at the present time from your Reserve officers for extended active duty?

General EDWARDS. On extended active duty?

Mr. DURHAM. That is right.

General EDWARDS. Approximately 40,000.

Mr. DURHAM. What is your backlog that you have not taken in?

General EDWARDS. Oh, that we have not taken in?

Mr. DURHAM. That is right.

General EDWARDS. We have applications pending from approximately eight to ten thousand Reserve officers to come on extended active duty.

Mr. JOHNSON. Do you guaranty them any particular length of service when they come on duty?

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General EDWARDS. No, sir; we protect the interest of the Government primarily. We require them to sign a statement that they will remain on active duty for 3 years, but if for any reason we would have to cut down our force that agreement only protects the Government and does not protect the individual.

Mr. JOHNSON. Well——

General EDWARDS. He normally can expect——

Mr. JOHNSON. As much as 3 years, perhaps?

General EDWARDS. He normally can expect to be on for 3 years.

The CHAIRMAN. Without objection, the amendment suggested by Mr. Cole will be agreed to.

Now, the thought is running through my mind to write a new section in the bill right here, known as section 203, because this relates to personnel and it ought to relate to civilian personnel, and I think there ought to be a section there carrying out the Byrd Act just like we had it when we passed it through the House.

Mr. KILDAY. Did we not exempt them?

Mr. BLANDFORD. That was stricken on the floor of the House.

The CHAIRMAN. Well, it is not going to hurt to put it in.

The CHAIRMAN. I put that in the bill when I introduced it separately. Then when the Department asked the bill be combined and I asked them to draft it, I see they left it out. Of course, I have no doubt in understanding why they left it out, because they did not want any restraint put in there by Congress with reference to the employees. But I think we ought to carry out what Congress already has sought to do and that is to limit the use of employment of civilian, civil-service employees. Let us not eat up all our money by giving jobs out.

Secretary SYMINGTON. No, sir. Mr. Chairman, General Rawlings would like to say a word on that, if he might.

General RAWLINGS. Mr. Chairman, you started developing the point about the relationship between civilian personnel strength and military strength. Actually, there is a close relationship. It was not brought out this morning very clearly that that relationship does exist. It would take approximately 225,000 civilian employees to go with the 502,000 military strength to give the full support for the full 70-group program that has been outlined.

The Byrd law ceiling as it now applies to the Air Force as a result of our separation from the Army is roughly 50,000. Actually, with transfer agreements and some exemptions, we have in the current appropriation act, I believe it is about 61,000 graded employees authorized under the Byrd law.

Therefore, if we had this full force the way the plan is laid out, since there is a relationship of about 1 to 1 graded to ungraded in our kind of activity, we should have an authorization of something like 100,000 graded positions.

The CHAIRMAN. Well, it will be 1954 before you get up there. Now, what is the use of putting them to work now? You may have to have more. And, of course, the civilian personnel should go along with the military personnel. They have a relation. But what you will be doing is that you will be filling up in 1949 what you need in 1954. I know of the tendency to find jobs.

General RAWLINGS. Sir, that was not my proposal. I was approaching this purely on the basis of the authorization bill when it

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was finally reached. I would not propose that in 1950, sir. That was not the point.

The CHAIRMAN. Well, if you have the authority to put them on, you will be the first Federal agency that does not exercise that authority.

General RAWLINGS. Sir, it was not in the bill. It was only when you raised the point of having that section that——

The CHAIRMAN. When it was redrafted you all left it out. Now I am suggesting to the committee for its consideration the advisability of putting it back in.

Mr. Blandford, do you have anything you want to say?

Mr. BLANDFORD. Yes, sir; the Army would like to be heard on that point.

Mr. COLE. Should this not be in title 3?

Mr. BLANDFORD. Yes, sir; if you are going to make it apply to both, it should be in title 3.

The CHAIRMAN. It should apply to both of them. But it ought to go in here and it ought to apply to all three services. We want it to show that you are not trying to bring into the service many more personnel than you can find places for down there, and you give somebody something to do for 8 hours instead of part of the time being spent in coffee hours and up and down the halls. It is a healthy provision and it strengthens the Department and Congress.

Later on I will call it up for the consideration of the committee.

Secretary SYMINGTON. Mr. Chairman, I would like to say one thing.

The CHAIRMAN. Yes, sir.

Secretary SYMINGTON. Before the final decision is made by the committee on that, we would like to give the figures we have as respects the graded and nongraded. For example, as these airplanes are getting more technical, we are having more difficulty in getting top-graded supervisory electricians and top-graded supervisory service and maintenance people for these new and complicated engines and planes. If it is right, of course it is right, but if it is wrong in this division between graded and ungraded, then the taxpayer is losing a lot of money. We are having a very difficult time now in our maintenance and operation picture. Of course, some of that is due to the Berlin airlift problem. But nevertheless, I was very much impressed in a recent trip into Germany in the fact that we have not yet got the proper technical skill available in the Air Force that we would have if we had a better graded picture as against nongraded in the civilian set-up.

The number of civilian employees of the Air Force on December 31 was 157,799. Of these, 143,698 were subject to Public Law 106, Seventy-ninth Congress. The ceiling under Public Law 106, as determined by the Bureau of the Budget for this date was 147,400. Personnel strength fell short of authorization due to (*a*) normal administration lag necessary in operating under numerical ceilings rather than average allowable pay strengths; (*b*) restrictive nature of the limitation as imposed by Public Law 390, Seventy-ninth Congress.

Since unification the Department of the Army has transferred to the Air Force 51,696 graded positions of a War Department statutory ceiling of 176,000 provided by Public Law 390. The comparable December 31 civilian strength of this category was 50,962. The present ratio of employment of graded versus ungraded in areas affected by

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Public Law 390 is approximately at 5 graded to 7 ungraded. This represents a considerable shift in balance from the 1-to-1 ratio which experience proves to be desirable. To operate on the current 5-to-7 ratio has made necessary the manning with military personnel of some jobs admirably suited to civilian employees. Fire fighters, guards, vehicle operators, and many clerical positions have been subject to such a shift. This is an undesirable situation in that it is contrary to good personnel utilization practices. The graded restrictions become even more meaningless when by competent determination certain categories of jobs can be shifted from ungraded to graded status.

The CHAIRMAN. Mr. Blandford.

Mr. BLANFORD. Yes, sir. In order to be in a position to answer these questions on the floor. Mr. Secretary, or General, would you explain for the record how the Air Force arrived at the need for 35,000 Regular officers in comparison with your present authorization of 20,000 Regular Officers, and then would you explain how you intend to distribute those officers?

General VANDENBERG. May I have General Edwards, our personnel chief, answer that?

General EDWARDS. In our studies to arrive at the size of the personnel part of our commissioned structure, our objective was to have the minimum of Regular officers. There were three factors that influenced our studies on that matter. One was the necessity of having a certain part of the career officers or Regular officers with the idea of acquiring stability in the officers corps. What seemed to be a desirable ration was 1 to 1: One Regular for one Reserve officer, on extended active duty.

Another factor that influenced that was the necessity of having sufficient Reserve officers on active duty on a 3-year normal tour to insure a constant flow of Reserve officers into our mobilization Reserve. That influenced us in arriving at that, and a figure of about 35,000 Reserve officers seemed to satisfy that requirement.

We also had to arrive at a compromise whereby we would not spend too much of our effort in training. A Reserve officer who serves 3 years and goes back into civil life, you might say into the active Reserve in civil life, has to be replaced by another Reserve officer. So we did not want to use up too much of our strength or our resource, that is, manpower resource, in building up a tremendous training establishment. That was an additional compromise which led us to this ratio of 35,000 Regular as against approximately 35,000 Reserves.

Mr. BLANDFORD. Now, General, you are going to have the authority to distribute your present rank on the basis of an increased authorization, increased from 20,000 to 35,000. Is that going to mean that you contemplate some wholesale promotions or will the Secretary put limitations on that to keep the promotions down?

General EDWARDS. No, sir; by no means. Our plan to go to 35,000 officers would be to reach that figure—Regular officers—over a period of 10 years, say, 1960, and the whole problem can be revaluated from year to year as we come up with our budget yearly. And the grades and ratings and the numbers in any grade would only be relative to the particular increase in any particular year.

The CHAIRMAN. Now I have asked Mr. Blandford to suspend his questions now because I want to make a little brief statement in the record. Today at 12 o'clock there will be a speech on the floor about the

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distinguished career of Gen. Courtney Hodges, who enlisted as a private and wound up as a general. He is retiring today. So we will take a recess until tomorrow morning at 10 o'clock.

Secretary SYMINGTON. We have an appropriations hearing tomorrow at 10, sir.

The CHAIRMAN. Well, then, we will take a recess until—when are you going to get through appropriations?

General RAWLINGS. We hope, sir, that the general hearing for the top staff will be over in 2 days.

The CHAIRMAN. Well, we will hear the National Guard tomorrow and the Reserve.

General RECKORD. Mr. Chairman, we would like to request that the gentlemen of the Air Force be present.

The CHAIRMAN. Well, they cannot be two places at one time. If you want to come here, you come here at 10 o'clock in the morning and we will hear you.

(Whereupon, at 11:50 a. m., the committee adjourned until Tuesday, February 1, 1949.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Tuesday, February 1, 1949.

(The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.)

The CHAIRMAN. Let the committee come to order.

This is a continuation of the hearings on H. R. 1437.

We have this morning the representative of the National Guard, General Reckord.

General RECKORD. Mr. Chairman and gentlemen of the committee, we were able to wire General Walsh at Chicago yesterday and get him here on a night train. So, with your permission, we would like you to hear General Walsh, president of the National Guard Association.

The CHAIRMAN. General Walsh?

General WALSH. Yes, sir.

The CHAIRMAN. Now, General, we will be glad to have you make any statement you desire with reference to this bill, H. R. 1437, wherein it relates to the National Guard.

STATEMENT OF MAJ. GEN. ELLARD A. WALSH, ADJUTANT GENERAL OF MINNESOTA AND PRESIDENT OF THE NATIONAL GUARD ASSOCIATION

General WALSH. Mr. Chairman and gentlemen of the committee, if you please sir, I would like to have entered in the record the names of those who are here representing the National Guard today:

Myself, Maj. Gen. Ellard A. Walsh, the adjutant general of the State of Minnesota and president of the National Guard Association of the United States;

Maj. Gen. Milton A. Reckord, adjutant general of the State of Maryland and chairman of the committee on legislation of the National Guard Association;

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Brig. Gen. Louis Evans Boutwell, of Boston, Mass., who commands the Sixty-seventh Fighter Wing, and who is chairman of the air advisory committee of the National Guard Association;

Brig. Gen. Charles R. Fox, the adjutant general of West Virginia and a member of the air advisory committee of the National Guard Association;

Maj. George J. Morey, the executive assistant to the president of the National Guard Association;

Maj. Allan G. Crist, the District of Columbia National Guard; and

Lt. Edmund F. Hogan, of the Air National Guard of the District of Columbia.

Mr. Chairman and gentlemen, in connection with the matter now before this committee, H. R. 1437, I wish to say that we are in accord with the provisions contained in title I thereto. It is only with reference to certain provisions contained in title II that we find ourselves at variance, and there are certain matters that we should like to clarify.

It is not my intention to go into the details of the bill, but with the permission of the chairman and the members of the committee I should like to defer that presentation and have it made by General Reckord.

With reference to the accomplishments of the National Guard itself during the past 30 months in the matter of organization of its troop basis, I should like to have that handled by Maj. Gen. Kenneth F. Cramer, who is the Chief of the National Guard Bureau of the Department of the Army, and who is here this morning with his staff.

I do not believe that it is necessary to go into any extended presentation as to what would be involved if the language of title II stands as it is now written. Suffice to say that it would mean the federalization of the National Guard in part. And if the time should ever come when Congress permits the federalization of the National Guard in part it will only be a question of time until the National Guard is federalized in its entirety.

To me it has always seemed more than evident that the framers of the Constitution knew exactly what they were doing when they ordained the military system which we find laid down in the so-called Militia clauses and the Army clause of the Constitution.

During part of 1947 and a part of 1948, as you gentlemen are aware, there was brought into being by the Secretary of Defense a committee known as the committee on civilian components and commonly referred to as the Gray Board. They were given a directive by the Secretary of Defense, and based on that directive they brought out a report which was released to the public on the 12th of August 1948. In that report they submitted some 90 recommendations of which the No. 1 recommendation was the complete federalization of the Guard. They proposed that that be accomplished by the creation of a single Federal Reserve embracing the ground units of the National Guard and of the Organized Reserve Corps, and, secondly, by a consolidation or amalgamation of the Air National Guard and of the Air Reserve into a single Air Reserve Force.

On December 11, 1948, the Secretary of Defense submitted certain recommendations to the President of the United States, which are contained in his report, and he said it was not their intention at this particular time to urge or recommend the amalgamation or federaliza-

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tion of the Ground National Guard but he did urge and recommend the federalization of the Air National Guard.

The CHAIRMAN. May I say, General—pardon me for interrupting—I don't think you need be disturbed about that as far as this bill is concerned, because, as was brought out yesterday, there is nothing in this bill with reference to the federalization of the National Guard or anything relating to the Gray Board.

General WALSH. No; but, Mr. Chairman, I submit if the language of title II stands as it is now written, and which puts into the hands of the Secretary of Defense all the power and authority with reference to the Air Reserve Force, then federalization of the Air National Guard will be accomplished.

The CHAIRMAN. I disagree with you, because this makes it positive and certain that it is under the State control. This sets it up absolutely and beyond any shadow of a doubt under State control, that it is under State control, under the language that is put in the bill now. Then to do what you just said would require an act of Congress.

General WALSH. Maybe so, Mr. Chairman. But I can find no place in that section where the Air National Guard is specifically mentioned as such. Nor is there anything which would insure its integrity.

The CHAIRMAN. It says:

The United States Air Force shall have an authorized strength of 70 regular air groups, 22 separate Air Force groups, supplemented by 61 Air Force reserve groups.

General WALSH. Right.

The CHAIRMAN. Now, doesn't that put it positively in the category of the ground troops?

General WALSH. In my opinion; no, sir.

The CHAIRMAN. Well, in the opinion of the Air Force yesterday there was no doubt about it.

Mr. JOHNSON. Mr. Chairman, could I ask a question right there?

The CHAIRMAN. Yes.

Mr. JOHNSON. Is there any other language, in your opinion, that you think encroaches on the autonomy of the National Guard, outside of 61 units as being part of the Air Force?

General WALSH. So long as there is no provision, Mr. Johnson, for the authority for the Air National Guard strength in title II of the bill, then in my opinion there is no provision.

But if it pleases the chairman, I would request that that matter be deferred and let General Reckord take it up when he goes into the analysis of the bill.

Mr. JOHNSON. What I wanted to get from you was: Can you point to any other specific language, or the lack of language, that encroaches on your jurisdiction?

General WALSH. Yes.

Mr. JOHNSON. If he is going to cover it, I don't want to ask you about it——

General WALSH. The language in section 201, Mr. Johnson.

But, again, I will let General Reckord cover that, if you please.

Mr. JOHNSON. All right.

General WALSH. There seems to be, Mr. Chairman and gentlemen of the committee, a complete misunderstanding as to the troop basis of the Ground and the Air National Guard.

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When General Marshall was Chief of Staff of the Army during the World War period he brought into being a Joint General Staff Committee on Policy, as provided by section 5 of the National Defense Act. That Joint Committee consisted of five Regular, five Guard, and five Reserve officers. And the gentleman who was chairman of that over-all committee was General Reckord, who is sitting here this morning. At that time he was Provost Marshal General of the European Theater. He was brought back by General Marshall to preside over the deliberations of that body. They finished their work with a unanimous report. There was no dissent.

And on October 13, 1945, these policies were promulgated and became known as the approved War Department policies of October 13, 1945, affecting the National Guard of the United States and the Organized Reserve Corps. Thus those policies became the Bible and it is in reference to those policies that we have proceeded all this time, and so has the Organized Reserve Corps.

It has been intimated that that committee determined the troop basis of the National Guard and the Organized Reserve Corps. That is not correct, because that committee had been dispersed and gone home for some 3 months before the troop basis was determined. The troop basis was determined by the Organization and Training Section of the War Department at that time, now the Department of the Army. And they gave to the National Guard a strength of 687,000, to be divided into two parts: The Ground National Guard and the Air National Guard. And here we are concerned with the Air National Guard in title II of this bill.

In those policies there were two basic assumptions: First, that there would be established a system of Universal Military Training, and, secondly, that the Federal Government would meet its fair share of the costs of providing housing, including armories. Neither one of these assumptions have been fulfilled.

And yet in this brief space of 30 months the National Guard has gone on to organize 5,000 units, both ground and air, and practically completed its Air National Guard program. The details of that accomplishment will be given to you by General Cramer, the Chief of the National Guard Bureau.

It has been intimated, too, that the National Guard had a hand in determining this troop basis and that the States asked for this tremendous troop basis. The States had no hand in doing it, and neither did the National Guard. And they were overwhelmed when they were given this troop basis, which was more than 300 percent greater than the troop basis which existed before the War. But assuming that these two basic assumptions would be satisfied, we agreed to go ahead, and we have done so.

It is now contended that there is no need in the States for an Air National Guard, that they have no State mission whatsoever—as stated by Mr. Forrestal in his report to the President on December 15, 1948.

We have never necessarily contended that there had to be a State mission for the Air National Guard. All we know, that we were given an allotment of 514 units which were to be contained in wings, groups, and squadrons, and we have completed 489 of those units. And the only reason at first that the States accepted those allotments was to the

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end that this Nation would have some semblance of an Air Force in being in the event emergency would arise and maintain them for the common defense, and for no other purpose. When they say they have no State mission, that is not true.

And I submit for your consideration what these units are now doing in the Western Plain States in connection with the terrible winter conditions which are prevailing from the Canadian border on down into Texas and Arizona. The same thing held true with the Ground National Guard.

If we carry this thing to its logical conclusion, we can say that the States have no need for artillery, for tanks, for heavy ordnance units, and a score of others.

We don't maintain those units for internal security. The internal security needs of the States could be satisfied when expressed in terms of infantry and some cavalry perhaps. But they have been maintained, and they are being maintained, for one purpose, and one purpose only, and that is the common defense.

There are gentlemen here from the Organized Reserve Corps who will speak for themselves, but I have listened to their presentations on many an occasion, and they are the sharpest critics of all of the failures of the War Department to implement the Reserve program. Certainly nothing was done in the years 1920 to 1940, and not one single organized Reserve unit, as such, was activated for service in the World War. Almost 3 years and a half have passed since VJ-day and conceivably little has been done to implement the Organized Reserve Corps program.

As a member of the Guard, I submit that the Organized Reserve Corps has its proper place in the scheme of defense, and we support them whole-heartedly and without reservation in their attempts to achieve that proper place in the defense structure of the Nation.

There is much that could be said. I would like, if you will bear with me, to go into just one phase of what is now before us even if there is an attempt to federalize the Guard in part through the matter of the Air National Guard. And I submit that on the basis of the constitutional question. I think it is advisable that this committee should have this in mind.

I would like to read, with your permission, the statement which I made before the Gray board on the 26th of February, nearly a year ago:

> That the framers of the Constitution contemplated a standing army as the only Federal force is clear from the arguments advanced by Hamilton in the Federalist papers 24 to 28, inclusive, whereby he persuaded the States to accept the principle of a standing army large enough to accomplish the immediate purpose of the Congress only, its size to be controlled by limiting of appropriations to a period of 2 years only. He, that is Hamilton, also persuaded the States to agree not to keep troops in time of peace without the consent of Congress in exchange for the provision that the Congress should have power to provide for the organizing, arming, and disciplining—and by that I mean training—of the militia, and the States reserving only the power to appoint officers and the authority to train the militia according to the discipline prescribed by Congress.
>
> Complete federalization would violate the principle on which the States bargained as above explained by giving the Federal Government in addition to its standing Army a part of the militia over which the State would have no power of control whatsoever, instead of the control provided for in clause 16, section 8,

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article I, of the Constitution. Nowhere in the Constitution is there any power given to the Federal Government to other than raise and support armies; and standing armies only were contemplated. No power was ever given to organize and support Federal militia, and none exists.

The guard over a period of more than 30 years has done everything that it has been called upon to do. It has accepted its troop allotments. It has organized those troop allotments insofar as the Congress would authorize or permit. In the last 30 months the guard has once again demonstrated its unparalleled genius for organization by accomplishing almost the superhuman or the impossible in bringing into being these 5,000 units that I mentioned, contained in 25 infantry divisions, 2 armored divisions, several hundred antiaircraft units, 18 regimental combat teams, and some 700 nondivisional units, plus an almost complete organization of its Air National Guard.

In World War I it gave to the Nation 18 divisions. In World War II it again gave 18 divisions, together with a host of corps and Army troops which were later organized into task forces.

I have no need to go into the performance of the guard in either of those wars. History speaks for itself. And the testimony of General Pershing before a joint meeting of the Senate and House Military Affairs Committees shortly after his return from France should settle that argument once and for all.

As to what the guard accomplished in World War II, the testimony of the wartime Secretary of War should suffice, when he said:

The National Guard has performed brilliantly on every fighting front and we look to it to be the bulwark of our national security.

I submit, in conclusion, gentlemen, that if the language as contained in title II, and notably section 201 remains as it is, it will only be a question of short order until the Air National Guard is federalized, if these things are left in the hands of the Secretary of Defense to determine. And once the Air National Guard is federalized it will only be a course of short time until the ground elements are federalized.

Now, with your permission, Mr. Chairman, I would like to turn the presentation over to General Reckord, who will speak specifically to the section in question, if I have your permission, sir.

The CHAIRMAN. Let us see if any members have any questions.

I want to thank you, General, for the clear-cut and fine statement that you just made. You have sewn a seed which will have to be carefully considered. You made a profound impression, I know, on me, by your logical and analytical discourse of this question.

But the one thought running through my mind is this: If what you say was in the minds of the framers of the Constitution, that there should only be the Federal responsibility of a Regular Army is correct, then by what authority does Congress make appropriations to support the State National Guards?

General WALSH. I see no conflict whatever, Mr. Chairman. If we go back to the original Militia Act of 1792, and to the National Defense Acts of 1916, 1920, and 1933, it was the business of the Congress to support the militia to the end that they would be available in the event of need.

The CHAIRMAN. Yes; but you put the thought in my mind that our responsibility was only for the Regular Establishment, and that the function of the National Guard, both ground and air, was directly a State responsibility.

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General WALSH. No, sir.

The CHAIRMAN. If that be true, then why does Congress constantly make appropriations to help support the State National Guard? Why not leave it exclusively to the States to take care of?

General WALSH. That isn't correct, Mr. Chairman, and I certainly never intended to convey any such idea. Rather, the opposite.

The CHAIRMAN. It would be logical, would it not, if the only responsibility of the Congress is to preserve a Regular Establishment, to say then that there is no responsibility on the Congress to appropriate money for maintaining a National Guard?

General WALSH. Oh, I think quite the contrary is true. I think it is the responsibility of the Congress, Mr. Chairman and gentlemen of the committee, to provide for the National Guard, or the militia, as much as they do for the Regular Army.

The CHAIRMAN. So do I. But, nevertheless, your line of reasoning, from your statement, led me to think that there was some ground for debate, by you pointing out so specifically that it was the duty of the Government to leave exclusively to the States the control over the National Guard.

General WALSH. Only in time of peace.

The CHAIRMAN. What?

General WALSH. Only in time of peace, and then only with reference to the appointment of the officers and the authority for the training, which the Congress itself must prescribe.

The CHAIRMAN. Let me ask you this one question: Hasn't the President appointed some board recently, headed by former Justice and Secretary Byrnes, to make some inquiry in regard to this subject matter?

General WALSH. Yes, Mr. Chairman. And as a member of that Commission, that is where I am supposed to be at this instant.

The CHAIRMAN. Are you a member of that?

General WALSH. Yes, sir.

The CHAIRMAN. Then, everyone on that Commission has already fixed views?

General WALSH. I hope not.

The CHAIRMAN. If they have, I do not think we are going to get much aid and assistance from that group, if they are all going over there with one viewpoint.

General WALSH. And it should be borne in mind, Mr. Chairman, that the Secretary of the Army's Committee on Civilian Components, commonly referred to as the Byrnes board, has only to do with the Army side. It has nothing to do with the air side. It is my understanding that the Secretary of Air has brought into being an ad hoc committee. And I believe there are two gentlemen on that committee who are here this morning: General Cramer and General Finch.

The CHAIRMAN. Who constitutes the board? Will you put that into the record?

General WALSH. I understand General Quesada is in the room. I didn't see him.

The CHAIRMAN. Now, was this board appointed by the President or the Secretary of Defense?

General WALSH. Secretary for Air.

The CHAIRMAN. No, I mean the board that was appointed——

General WALSH. You mean the Byrnes board?

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The CHAIRMAN. Yes.

General WALSH. It was appointed by the Secretary of the Army, and in my directive, it stated with the approval of the President.

The CHAIRMAN. Then Secretary Royall has appointed a board to deal with the question of the National Guard in its relation to the Army?

General WALSH. All Reserve components, Mr. Chairman, and primarily to determine their future troop basis, if they can.

The CHAIRMAN. I see.

General WALSH. But I submit if they do they will have to be all Solomons.

The CHAIRMAN. If there are no questions, then we will take General Reckord and let him make his statement.

STATEMENT OF MAJ. GEN. MILTON A. RECKORD, ADJUTANT GENERAL OF THE STATE OF MARYLAND AND CHAIRMAN OF THE COMMITTEE ON LEGISLATION OF THE NATIONAL GUARD ASSOCIATION

General RECKORD. Mr. Chairman and gentlemen, I will endeavor to expedite my remarks and then answer any questions, if I may, with respect to sections of the bill under title II.

With respect to title II of the bill, H. R. 1437, pertaining to the Air Force, we find that it is very poorly drawn in a number of respects.

The CHAIRMAN. General, you are not going through this statement?

General RECKORD. Beg pardon?

The CHAIRMAN. You are not reading from this statement?

General RECKORD. I skipped part of it because General Walsh——

The CHAIRMAN. Well, let us start right at the top of it.

General RECKORD. Well, the first part, Mr. Chairman, pertains to section 1, which we covered yesterday and need not be touched upon today.

The CHAIRMAN. I want to start right out at the beginning. We have plenty of time this morning.

General RECKORD. All right, sir. Thank you.

Mr. Chairman and members of the committee, the National Guard has no objection to title I of this bill, as it has been amended. The bill gives the Army National Guard an authorized strength of 750,000. We did not ask for this authorization. For in the event of an emergency we can go to this strength without having to come back to Congress for authority to increase our numbers.

Then, too, the actual strength will be determined by policy and the amount of money appropriated each year. We have about 320,000 officers and men in the National Guard now, and we think we've done a good job. And I believe we will go on doing a good job.

As amended, title I of the bill is satisfactory to the National Guard because section 60 of the National Defense Act will continue to be the determining factor in the matter of units accepted by the States. We did have some reservations about title I until you amended it by striking out the authority of the President to apportion the National Guard strength when and as he saw fit.

That was agreed to, as you remember by the Department last week.

The CHAIRMAN. Yes, sir.

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General RECKORD. I still believe, however, that we ought to insert a couple of words in section 103.

Mr. Chairman, that had to do with the word "armory," which you and I have discussed since.

The CHAIRMAN. And we will give you a hearing on that.

General RECKORD. Mr. Chairman, we have the bill prepared in the language which we agreed to last May and we have not been able—I say "we," the Department has not been able, so we are advised—to get the bill out of the Bureau of the Budget.

The CHAIRMAN. You give me the bill that you prepared and we will introduce it on our own responsibility.

General RECKORD. Yes, sir.

The CHAIRMAN. Then we will call the budget up later, while we are having the hearing.

General RECKORD. I will see you get that this afternoon.

The CHAIRMAN. All right. You give me the bill and we will have it introduced in the morning.

General RECKORD. Then we would like to pass over what appears at the bottom of this first page and the top of the second one, and come to title II of the bill.

The CHAIRMAN. All right.

General RECKORD. As I stated before, we think this bill is very poorly drawn.

In section 201, we invite your attention to a point made by Mr. Kilday yesterday wherein the term used——

The CHAIRMAN. Where is it, General? I can't find it.

General RECKORD. That is the middle of page 2.

Mr. COLE. Mr. Chairman, my eye caught the last sentence of the paragraph which the general has omitted, which I suggest that he read for our information.

The CHAIRMAN. Read it all through. It is a good statement. Don't be trying to get rid of any part of it.

General RECKORD. I was merely trying to save the committee's time.

The CHAIRMAN. We have plenty of time. Read this thing through so we can follow it.

General RECKORD (reading):

SEC. 103. The Secretary of the Army is hereby authorized to procure the materials, including guided missiles, facilities, and armories—

and so forth.

Putting the words "and armories" in there after "facilities" will permit us to use Federal funds so that ye can get the armories built. A year ago the Appropriations Committee of the House determined that the word "facilities" did not mean "armories." So we have been unable to get the armories built. I hope you can find the way to make this change.

But there is one thing about title I that we ought to keep in mind. Numerous critics before me have put the spotlight on the fact that no single agency ever has considered the over-all manpower problem of the United States; not only that of the Army, and the Navy, and the Air Force, and all of their components, but of industry, and agriculture, and education, and all of the other diverse elements that make up our national structure. Each service has figured out what it thinks

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it needs to do a job, and when you add all of the figures together you have a staggering total.

Now, only within the past few weeks the Secretary of the Army appointed a special committee, headed by Mr. James Byrnes, comprising a group of distinguished citizens and Regular, National Guard, and Reserve officers to carefully study the whole troop basis of the National Guard and the Organized Reserve Corps, in the light of changing conditions. Yet, if this proposed bill is rushed through your committee, the work of the Byrnes committee, which has not yet held its first meeting, will have been completely ignored. Keeping in mind that legal authority now exists for the composition of the Army and Air Force and their civilian components, I see no urgency for the enactment of H. R. 1437, and I suggest that this bill be laid aside, at least until Mr. Byrnes' committee has submitted its report.

Mr. COLE. That is the sentence to which I referred?

General RECKORD. Yes.

Mr. COLE. On that point, do you have any idea as to how long this delay might be while we await the Byrnes report?

General RECKORD. The Byrnes committee is having its first meeting today, and that accounts for the fact that we were able to get General Walsh here this morning.

The Quesada committee, on the Air Corps side, appointed by Mr. Symington, I understand has had its initial meeting, or maybe more than a single meeting. General Quesada is present in the room, and he could probably answer that better than I.

Mr. COLE. In view of your experience in dealing with matters of this nature over a period of years, do you have any estimate of the time that it might require for the Byrnes and the Quesada groups to submit their reports?

General RECKORD. Well, I should think certainly 60 days would cover it. It should cover it.

Mr. COLE. In other words, other similar boards in the past have completed their assignments—their missions—within that period of time?

General RECKORD. Congressman, I wouldn't want to go on record to that effect because if you keep in mind the Gray report, it took them 6 months or more. But these boards are dealing with specific subjects, rather than the over-all picture, and frankly and honestly, I think they should finish their job in 30 days, and if a real effort is made, I believe they can do it.

The CHAIRMAN. Well, General, may I say in response to the inquiry suggested by Mr. Cole, that I know of no legal authority for a 70-group force. Where is any authority that Congress has given to establish the 70-air group now?

General RECKORD. Mr. Chairman, I am not trying to tell the chairman what he should do. I am just pointing out the fact that these two committees are meeting now, and if they are going to do any good at all it does seem to me the committee should have the benefit of their studies. But that is for you gentlemen to decide.

Mr. JOHNSON. Mr. Chairman, could I answer the question?

The CHAIRMAN. Yes, sir.

Mr. JOHNSON. What harm would it do to have this bill passed, since the work of the Byrnes board is only to determine the troop allotments of the Ground Forces?

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General RECKORD. Mr. Johnson, if this bill in section 2 is redrawn, it would do no harm.

But if you will permit me to analyze these two sections, I think I can show you definitely that it should be changed; that is, the section should be redrawn.

Mr. JOHNSON. You are referring to title II?

General RECKORD. Title II, sections 201 and 202.

Mr. KILDAY. Mr. Chairman.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. Before we leave that point, the only thing that troubles me about waiting for a board appointed by the executive branch of the Government is the implication that we are dependent upon the administrative branch in fixing the strength or size of our armed forces, because that is a matter of policy within the sole jurisdiction of the Congress, and of which I am very jealous. I don't want it to appear that we are dependent on what they say over there.

General RECKORD. Yes. I will strike that recommendation out of my statement.

Mr. COLE. Well, General——

The CHAIRMAN. I wouldn't do it. Let it stay.

Mr. COLE. Why back up after you have made a perfectly logical point?

General RECKORD. I am backing up only because I didn't want to sit here and tell the committee what they should do.

The CHAIRMAN. We are glad to have the benefit of your views because by the exchange of ideas the best results can be obtained. We don't have to agree with you, and you don't have to agree with us. We want a frank statement, and I compliment you for having a frank statement. I don't think you should strike it out.

General RECKORD. My first reaction when I learned the committee was about to hold hearings on this bill was to the effect that the result of the two studies being made in the Department of Defense could have no weight if the committee did not wait for those reports.

Mr. DURHAM. General, can't most of this information be secured from the National Security Resources Board, the Planning Board which covers this whole field?

General RECKORD. No, sir; I don't believe so.

Mr. DURHAM. Well, that is what it was set up for. It has been in existence for several years.

General RECKORD. Well, the troop basis plan, as I understand it, is: The committee is going to make a restudy to see whether they should come up with a different proposal which might take less officers and men; that is, strength.

Mr. DURHAM. It just looks like we are getting a duplication of per diem here, of boards scattered all over the place. There are more and more of them. Certainly the intention of Congress when the National Security Resources Board was set up, was to set it up for that purpose.

General RECKORD. I know the two committees are meeting, and it was my thought that out of their reports the committee could get something that would be helpful.

Mr. ELSTON. Mr. Chairman, may I ask a question there?

The CHAIRMAN. Mr. Elston.

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Mr. ELSTON. After all, General, this bill only seeks to fix a maximum.

General RECKORD. Yes, sir.

Mr. ELSTON. And if the report of the Byrnes committee does come along, it will in all probability be within the maximum fixed by this bill. If perchance it is beyond the maximum, it may be that the Senate would not have passed the legislation by that time and will give consideration to the report.

General RECKORD. That is correct, Mr. Elston.

The CHAIRMAN. Mr. Towe.

Mr. TOWE. General, do I understand that in addition to the Gray report, which we had last year, we now have a committee headed by Mr. Byrnes to deal with problems of the Army?

General RECKORD. On the Army side.

Mr. TOWE. And a separate committee appointed by the Secretary for Air to determine some of their problems?

General RECKORD. Headed by General Quesada of the Air Force.

Mr. TOWE. Those committees are not working together?

General RECKORD. Separate committees.

The CHAIRMAN. Now, go right ahead, General. Lead on. We are following you closely.

General RECKORD. Section 201——

The CHAIRMAN. Wait a minute. You have one sentence there—

With respect to title II of the bill H. R. 1437 pertaining to the Air Force, we find that it is very poorly drawn in a number of respects, and wish to invite your attention to such errors and suggest corrective language.

Now, take it up from there.

General RECKORD. In section 201, we invite your attention to a point made by Mr. Kilday yesterday wherein the term used "the United States Air Force," which under the provisions of the Unification Act, Public Law 253, section 208 (a), approved July 26, 1947, states—

the United States Air Force is hereby established under the Department of the Air Force—

bear in mind section 207 (a) of the same act states—

within the National Military Establishment, there is hereby established an executive department to be known as the Department of the Air Force.

The term "Department of the Air Force," as used in the Unification Act, shall be construed to mean "The Department of the Air Force" in the seat of government and all field headquarters forces, Reserve components, installations, activities, and functions under the control or supervision of the Department of the Air Force. You will note, therefore, that the United States Air Force is the Regular Air Force, and it comprises those officers, warrant officers, and enlisted men who belong to the Regular Establishment together with those who may from time to time be ordered to active duty from the National Guard and the Reserve. The language of section 201 is not in step with this understanding.

Since 61 Air Force Reserve groups are covered into the United States Air Force, if that is the intention, it would be a very definite amendment to Public Law 253 which is now the law and which I have quoted above.

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The National Defense Act, section 1, as amended, defines the Army of the United States as follows:

That the Army of the United States shall consist of the Regular Army, the National Guard of the United States, the National Guard while in the service of the United States, the Officers' Reserve Corps, the Organized Reserves, and the Enlisted Reserve Corps.

From this it will be seen that the National Guard in time of peace is not a part of the Army of the United States.

Section 58, National Defense Act, defines the National Guard and also the National Guard of the United States. The National Guard is that part of the Organized Militia which is federally recognized by the Department of Defense. The National Guard of the United States is a reserve component of the Army of the United States, consisting of those federally recognized National Guard units, organizations, officers, warrant officers and enlisted members of the National Guard of the several States.

Mr. COLE. Mr. Chairman, I would like to have the general express that distinction in different words. I haven't been able to catch it as you have given it here in your statement.

General RECKORD. Mr. Cole, the National Defense Act, and the Constitution of the United States, provide for the militia. The militia is all able-bodied men between 17 and 45. The Organized Militia is that part of the militia that is actually organized into units. The National Guard is that Organized Militia which has been offered to the Government, and has been accepted, and federally recognized by the Department, and in turn they receive equipment and appropriations from the Congress. The National Guard of the United States is superimposed man for man on top of the National Guard of the several States, and the National Guard of the United States is a reserve component.

Mr. COLE. Well, are there organized units of the militia which are not recognized by the Federal Government?

General RECKORD. Every unit presented has to be first organized by the State. In that category it is Organized Militia. Then it is offered to the Department and accepted and becomes immediately National Guard, federally recognized.

Mr. COLE. Are there organized units of the militia which have not been recognized and accepted by the Federal Government?

General RECKORD. There would be very few, and at this time only those that are in process of being organized along the general plan for presentation for Federal recognition.

Mr. COLE. And is that the distinction between the National Guard and the National Guard of the United States? The National Guard consists of those organized units of the militia which have been recognized by the Federal Government. The National Guard of the United States includes all organized units of the militia, whether recognized by the Federal Government, or not?

General RECKORD. No, sir. You missed the point, Mr. Cole.

Mr. COLE. I still don't see the distinction, then.

General WALSH. General Reckord——

General RECKORD. Yes.

General WALSH. Mr. Chairman, could I inject something here which I think will answer Mr. Cole's question?

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The CHAIRMAN. With pleasure, General.

General WALSH. If we go back to the act of June 3, 1916, which was the first of the National Defense Acts, and it was then amended by the act of June 4, 1920, it stated this, that the Army of the United States would consist of the Regular Army, the National Guard when in the active military service of the United States, and the Organized Reserves. The National Guard was never satisfied with that status and it desired that it be made a component of the Army of the United States at all times in peace as well as in war. So under the terms of the act of June 15, 1933, the Congress amended the National Defense Act by creating a brand-new reserve component of the Army of the United States known as the National Guard of the United States. And the law, as amended by the terms of the act of June 15, 1933, then stated that the Army of the United States would consist of the Regular Army, the National Guard of the United States, the National Guard of the several States when in the active military service of the United States, and the Organized Reserve Corps.

Now, the law further provided—that is the act of June 15, 1933—that the National Guard of the United States, which was wholly Federal, should be identical as to organization and personnel, with the National Guard of the several States, but the two could never be active at the same time. When the National Guard of the several States was active, as it was active from 1933 to 1940, then the National Guard of the United States was dormant.

But when the Congress enacted Public, No. 96, approved August 27, 1940, then the National Guard of the United States was ordered into the active military service of the United States, and remained therein for the duration of the war. And all that time the National Guard of the several States was dormant.

Then, on February 6, 1946, the Federal Government deactivated the National Guard of the United States, and ordered the National Guard of the several States to be organized. So it became active while the National Guard of the United States became dormant. Thus the two can never be active at the same time.

That is all covered——

Mr. COLE. Although they consist of the same individuals.

The CHAIRMAN. That is right.

General WALSH. And organizations.

The CHAIRMAN. And it is the same organization.

General WALSH. Exactly.

The CHAIRMAN. The National Guard and the National Guard of the United States is the same organization, but they function at different periods?

General WALSH. That is correct, Mr. Chairman.

General RECKORD. I think I would definitely clear Mr. Cole's question if I read the definition in section 71 of the National Defense Act.

"National Guard or National Guard of the several States, Territories, and the District of Columbia" means that portion of the organized militia of the several States, Territories, and the District of Columbia, active and inactive, federally recognized as provided in this Act, and organized, armed, and equipped in whole or in part at federal expense and officered and trained under paragraph 16, section 8, Article I of the Constitution.

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Now, that is the organized militia federally recognized and known as the National Guard.

National Guard of the United States mean a Reserve component of the Army of the United States composed of those Federal recognized units and organizations and persons duly appointed and commissioned in the active and inactive National Guard of the several States, territories, and the District of Columbia, who have taken and subscribed to the oath of office prescribed in section 73 of this act and who have been duly appointed by the President in the National Guard of the United States as provided in this act, and so forth.

The CHAIRMAN. Now, let me clear this up in my mind, General. If we were forced into war today, then the National Guard would automatically become known as the National Guard of the United States?

General RECKORD. Mr. Chairman, if we were in a minor emergency, Congress has authorized the President under certain conditions to call the National Guard as organized militia to active service. The minute they respond to that call, for that period, they are part of the Army of the United States.

The CHAIRMAN. They become then known as the National Guard of the United States?

General RECKORD. No, sir; National Guard in the service of the United States.

The CHAIRMAN. When do we get the group known as the National Guard of the United States?

General RECKORD. When the Congress shall have declared an emergency and shall have authorized the President to do so, he may order the National Guard of the United States into the Federal service.

Now, I can give you the two examples outstanding——

The CHAIRMAN. Wait one moment. Are they known today as the National Guard, or are they known today as the National Guard of the United States?

General RECKORD. Both.

The CHAIRMAN. Both?

General RECKORD. Both.

The CHAIRMAN. And the same group constitutes both organizations?

General RECKORD. Yes, sir.

Mr. COLE. Mr. Chairman, I suggest that the Chair and I have a little seminar by ourselves——

The CHAIRMAN. But they can't function at the same time?

General RECKORD. That is correct.

The CHAIRMAN. So today we are functioning as the National Guard?

General RECKORD. In time of peace.

The CHAIRMAN. In time of peace?

General RECKORD. Yes.

The CHAIRMAN. And in case of emergency they could still function as the National Guard called to the Regular Army?

General RECKORD. In the Mexican Border service we were called. In World War service we were ordered. It makes quite a distinction.

The CHAIRMAN. All right.

Now, what was the reason behind ever establishing the National Guard of the United States?

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General RECKORD. Mr. Chairman, that goes back to World War I.

The CHAIRMAN. Let us not go that far back. I will withdraw my question, General.

General RECKORD. I will answer your question specifically: Many of us who were in the National Guard, and who were taken into the Federal service with the guard in World War I disliked very much the fact that although we held commissions and appointments we were drafted into the Federal service as individuals. So it took us from 1920 to 1933 to get the predecessor of this committee—this very committee—to see the wisdom of creating the officers and men who were in this organized militia known as the National Guard into a dormant organization in time of peace known as the National Guard of the United States, which by order could be brought into the Federal service.

Mr. KILDAY. Mr. Chairman—right there, isn't that the whole point?

General RECKORD. Yes, sir.

Mr. KILDAY. The National Guard was dissatisfied with its status under the National Defense Act of 1920.

General RECKORD. Very much.

Mr. KILDAY. Because you are not a part of the AUS.

General RECKORD. That is correct.

Mr. KILDAY. And this was superimposed more or less to satisfy your wounded feelings?

General RECKORD. No doubt of that.

Mr. KILDAY. Therefore, it becomes very difficult to show a distinction.

General WALSH. Mr. Chairman, I can give you a better answer on that.

The CHAIRMAN. All right, what is your answer?

General WALSH. The Military Affairs Committee in 1920 said this:

> It was never intended by Congress when it passed the National Defense Act of 1916 that any power should be lodged in the War Department which would enable it to practically destroy the National Guard at one blow, for the War Department had assumed that power and by its arbitrary discharge from every obligation of State and nationl service of every unit of the National Guard which went into the Army during the war it has all but destroyed the National Guard.

General RECKORD. You see, Mr. Chairman, what happened—if you will permit me to go back to World War I again—I was a major at the time, and by order of the President we were all permitted to act in the capacity, although we had no Federal appointment, until such time as we could be federally appointed and commissions sent to us. My commission as lieutenant colonel never did reach me until I got back from the war, although I came home a colonel.

Now, we didn't like that.

And another big point was that because we had been drafted we had completed our obligation and been relieved of it in the State and when we came home from the war we were discharged as individuals and there was not even a skeleton upon which to build the new National Guard.

Now, section 111 of the National Defense Act is what we call our Army section, and it provides that when the Congress shall declare an emergency the President may order this Reserve component known as the National Guard of the United States into active service, and as far as practicable when the war is over these units shall march back

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into their respective States and communities, at least the framework, and start to build again.

But in 1933 we didn't contemplate a 5-year war. So when the guard units marched back from this war every enlisted man had served out his 3-year enlistment, because the war had lasted 5 years. So we had the officers upon which to start to build, and the War Department asked us to accept these allocations and begin to rebuild the guard.

Now, at that time the Air Corps was a part of the War Department, and the Air Corps' part of the Department offered the States certain Air Corps units and organizations. We have almost completed that organization. I would say it is about 95-percent complete, in 2 years. It is almost unbelievable, if we do say it ourselves. And yet there are people in the Pentagon who, they say in the interest of national defense, would destroy it. We say in the interest of national defense it should not be destroyed, and we are asking you gentlemen of Congress to see that we aren't destroyed. That is the nub of the whole thing.

The CHAIRMAN. In that connection, I fail to find anything in this bill which would upset that situation. And as I said to the previous witness it will require, as I understand it, specific legislation to do so because under the present set-up, from what you just said, you are organizing the Air Guard—and it is recognized by the Department as being under the jurisdiction of the States.

And there is nothing in this that I can interpret as being to the contrary, and the Department said positively yesterday there was nothing in the bill. That is the reason I have repeatedly said to you I didn't see why you were disturbed about this at this hour. You might be disturbed a little later on.

General RECKORD. Mr. Chairman, if you gentlemen pass this bill it is the entering wedge.

Now, I ask you to let me read just this one sentence in section 201.

The CHAIRMAN. Go right ahead now and read your statement straight on through.

General RECKORD. Let me read the statement that is pertinent to the remarks just made. [Reading:]

The Air Force of the United States * * *—

that, bear in mind, is the second sentence in section 201, which purports to be a section about the United States Air Force. The first sentence covers the United States Air Force, and then the very next sentence is about the over-all force, in the same section. In the first sentence they deal with the Regular Air Force, and in the second sentence they say:

The Air Force of the United States is authorized to consist of the number of organizational units, with their installations and supporting and auxiliary elements, including tactical, administrative, logistic, air transport, and training, as may be determined by the Secretary of the Air Force consistent with the numbers of personnel and aircraft hereinafter authorized.

And as to hereafter in this bill, there is not one single man authorized for either the National Guard or the Organized Reserve.

Mr. ELSTON. Mr. Chairman, may I ask a question there?

The CHAIRMAN. Yes.

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Mr. ELSTON. General, wouldn't it follow as a matter of interpretation of law that since in section 101, where we authorize the composition of the Army, we specifically refer to the Organized Reserve Corps, and to the National Guard——

General RECKORD. Yes, sir.

Mr. ELSTON. That if we don't do the same thing in title II, it might be considered that the Congress intended to ignore the National Guard and the Organized Reserve.

General RECKORD. Mr. Elston, I think there is no doubt about that.

And we are here to ask you to specifically authorize in separate paragraphs in title II the strength for the Air National Guard and strength for the Air Reserve similar to the way you have done it in title I.

Mr. ELSTON. Wouldn't it be reached simply by doing what we did in title I, and saying—and I am now referring to section 201—

The United States Air Force shall have an authorized strength of 70 Air Force groups and 22 separate Air Force squadrons, supplemented by—

instead of 61—

34 Air Force Reserve groups and 27 Air National Guard groups

General RECKORD. No, Mr. Elston. You missed the point there.

The CHAIRMAN. If you put in there the National Guard, you accomplish it.

General RECKORD. If you rewrite this section you can easily accomplish it.

Mr. ELSTON. Well, I hadn't finished what I wanted to say.

General RECKORD. No, you missed the point.

Let me correct you: The United States Air Force is the regular Air Force.

The CHAIRMAN. That is right.

General RECKORD. Now, if you had said the Air Force of the United States, see, which is in the second section, it is all inclusive. But we don't want the authority for the National Guard Air and the Organized Reserve Air to be under the term "United States Air Force," because we are not a part of the regular force.

Mr. ELSTON. Do you think the language "supplemented by" makes it a part?

General RECKORD. I think it would be much better if we did in this title what we did in title I.

Mr. ELSTON. Well, isn't that what we did in title I?

General RECKORD. Make them separate and distinct.

Mr. JOHNSON. General, you want the same language and categories for the Air Force as you made for the Ground Forces?

General RECKORD. That is right.

Mr. JOHNSON. So each one is out there standing by itself.

General RECKORD. And we know——

Mr. JOHNSON. And it isn't supplemented——

General RECKORD. And we know, then, that the Congress intends the Air National Guard shall not be destroyed.

Mr. GAVIN. How would you have it read?

General RECKORD. Gentlemen, this bill is either poorly drawn or somebody has tried to be very smart.

Mr. ELSTON. It looks like section 101 might be poorly drawn because——

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The CHAIRMAN. I am inclined to think it is the first. Nobody is trying to put a joker in this bill.

General RECKORD. Let me point out what I mean, Mr. Chairman.

This bill purports to supplement the Regular Air Force with 61 Reserve groups.

The CHAIRMAN. That is right.

General RECKORD. I have just tried to point out to you the technical difference between the National Guard as Organized Militia and the National Guard of the United States as a Reserve component.

So the people, if they thought they were going to make it possible to take the National Guard Air away from the States under this bill, would do it this way. There was only one way they could do it, and that is by this over-all authority which this language will give to the Secretary of the Air Force to do as he pleases with the whole air organization, including the 61 Reserve units. He could gradually take funds and planes away from the National Guard unit and build up to 61 Reserve units, and then the National Guard Air would just be out on the end of the limb and die.

Now, if that is what they had in mind, and that is what this committee wants to see done, this bill will accomplish it. But other than that, this bill as drawn can't hamstring the National Guard in time of peace as long as we can go across the hall and get the Appropriations Committee to appropriate funds under the National Guard head.

But the thing we fear, Mr. Chairman, is with this authority—more authority than anybody else I would say including the Secretary of Defense because I am unable to understand this saving clause back here to save my life, I can't tell what it means—the Secretary of Air is given over-all authority to do as he pleases with all of the Regular Air Corps and these 61 Reserve groups, and all of the supporting troops.

To whom has this committee ever, except in time of war, given that much authority? Only to the President of the United States.

Now, I tell you, gentlemen, this legislation as drawn is dangerous. And we say that sincerely. We admit we don't want the National Guard Air to be destroyed.

And we have General Cramer here to show you what we have accomplished in 2 years.

The correct approach, if I may be so bold as to say it, would be to wait and let the Air Corps prove they can raise Reserve units and carry part of this load.

For 2½ years—General Evans is here, and I haven't conferred with him on this at all, but he will tell you, I know—the Regular Air Force has done almost nothing with the Air Reserve. General Cramer can give you the facts and the figures. You will see that the Regular Air Force has spent in the last 2½ years almost as many million dollars for what they have in the Reserve, and almost as many dollars as we have in the Guard, and compared to what we have given national defense it isn't a drop in the bucket. That is the reason we want you gentlemen to save us from being destroyed.

Mr. ELSTON. Mr. Chairman, may I ask another question?

The CHAIRMAN. Yes.

Mr. ELSTON. General, the language which I suggested—I hadn't quite completed my statement—wouldn't that be sufficient, since it does follow generally title I, if you struck out the words at the con-

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clusion of section 201, "as may be determined by the Secretary of the Air Force"?

General RECKORD. Yes, sir; if, Mr. Elston, you would go over to the next page and you would authorize strengths for the National Guard and the Reserve, as you have done in title I.

Mr. ELSTON. That obviously should be done.

General RECKORD. There are absolutely no strengths in here for the Reserve at all. And yet——

The CHAIRMAN. If it is 61, isn't it 61 groups?

General RECKORD. Sixty-one groups.

The CHAIRMAN. Isn't that the group?

General RECKORD. No, sir.

The CHAIRMAN. Wouldn't you want that broken down to so many National Guard and so many Reserve?

General RECKORD. I would say follow the change you made with General Bradley last week. Give us a total over-all strength. We are willing to make adjustments, Mr. Chairman.

The CHAIRMAN. Yes.

Now, let us see. Instead of having it 61, say 27 National Guard groups and 34 Reserve groups.

General RECKORD. But we think you ought to name the strength. You named the strength over here for the Regulars.

The CHAIRMAN. Now, when you put the groups, isn't that naming the strength, because that carries with it how much personnel?

General RECKORD. No, sir.

The CHAIRMAN. And the whole thing.

Now, we could have said in regard to the National Guard, instead of saying 750,000 men, so many divisions and so many Army corps.

General RECKORD. Mr. Chairman, that is just what you didn't do. You came in here with a bill—and I have the printed copy here somewhere where you did that—and General Bradley pointed out to you that he didn't like it that way, and you changed it for him.

The CHAIRMAN. Yes.

General RECKORD. We are asking you to follow the same rule here.

The CHAIRMAN. Then, 27 National Guard air groups is the number; is it?

General RECKORD (turning to an associate). That is the correct number; isn't it?

The CHAIRMAN. Yes——

General RECKORD. Twenty-seven groups.

The CHAIRMAN. What you want to do: 27 groups, consisting of so many officers.

General RECKORD. Yes, sir.

The CHAIRMAN. And consisting of a certain number of men.

General RECKORD. That is right.

The CHAIRMAN. How many men would that constitute?

General RECKORD. I think the total is something like 58,000.

What is it, General Cramer?

General CRAMER. Fifty-eight thousand one hundred and thirty-nine.

General RECKORD. Fifty-eight thousand one hundred and thirty-nine.

The CHAIRMAN. All right.

Then it would say in the bill that the United States Air Force shall have an authorized strength of 70 Regular Air Force groups, and 22

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separate Air Force squadrons, supplemented by 27 National Guard groups composed of not exceeding 58,000 officers and enlisted men.

Mr. ANDERSON. That would go in section 102.

General RECKORD. That strength should go over in the next section, where you cover the strength for the Regular Air Force.

Mr. HARDY. You don't do that in section 102 with respect to the Regular Army.

General RECKORD. If you follow the same procedure in title II that you followed in title I, Mr. Chairman, it will be entirely satisfactory to us.

Mr. GAVIN. Why don't you make the suggestion, General, of just what you mean?

Mr. COLE. Mr. Chairman, I suggest that we listen to whatever recommendations the general has to offer with respect to amendments. They have given this problem thorough study and apparently the committee, for the moment at least, have a mind to cooperate. I think we ought to hear what the general recommends, rather than for us as individuals to be stabbing at it.

The CHAIRMAN. Let him finish his statement, Mr. Cole. Then we will take him up.

Let us not stop him any more. We are all at a little fault in stopping the general.

General RECKORD. I think I have fully covered the point you made, Mr. Kilday, with respect to the difference in the titles.

Mr. KILDAY. I think you covered the point.

General RECKORD. Between the Regular and the Reserve organi zations.

The CHAIRMAN. Go ahead. Start on page 3, beginning with "section 60 of the National Defense Act," and read the balance.

General RECKORD. Section 60 of the National Defense Act provides that no change in allotment, branch or arm of units, organized wholly within a single State will be made without the approval of the governor of the State concerned. This proviso is for the protection of the State, once having accepted an allotment from the War Department, now the Department of the Army and the Department of the Air Force. It is the intent, the State having accepted a unit or organization in good faith, would not, at the whim and fancy of certain individuals in the Department of Defense, Army or Air, arbitrarily change that allotment.

The 61 Air Force Reserve groups should be mentioned in this bill separately and distinctly from the United States Air Force which is the Regular group, and we request your committee to give careful consideration to a further break-down of these 61 Air Force Reserve groups, similar to the way in which you approved title I on the Army within this same bill. We desire that section 201 be amended to provide authorization specifically for 27 Air National Guard groups and 34 Air Reserve groups with the necessary supporting and auxiliary units.

That is all we have to present on section 201.

I would like now to go on, if I may—or would the chairman rather I stick to my statement?

The CHAIRMAN. Go right on with your full statement.

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General RECKORD. Again in section 201, I invite the attention of the committee to this language:

> The Air Force of the United States is authorized to consist of the number of organizational units, with their installations and supporting and auxiliary elements, including tactical, administrative, logistics, air transport, and training, as may be determined by the Secretary of the Air Force, consistent with the numbers of personnel and aircraft hereinafter authorized.

That language, gentlemen, undoubtedly indicates that the total Air Force of the United States, that is, the Regular, National Guard, and Reserve, is to be whatever may be determined by the Secretary of the Air Force consistent with the numbers hereinafter authorized.

I now invite your attention to the fact that only Regular Air Force is hereinafter mentioned. There is no mention later in the bill of a strength for either the Air National Guard or the Air Reserve. It is hard for me to believe the sections 201 and 202 have been drafted in error. In my opinion, the people in the Pentagon Building are too smart to make what at first appears to be a number of mistakes in these two sections. I think they have been deliberately drawn to place in the hands of the Secretary of the Air Force all authority to do as he pleases with the Regular Air Force, the National Guard Air Force, and the Reserve Air Force, without reference to anyone, except the over-all authority which this bill purports to give the Secretary of Defense in section 302. Certainly the language in section 201 would be construed to amend the pertinent paragraphs of the National Defense Act.

Only a few days ago I was told by General Vandenberg that the Air Force did not wish to take the authority over the Air National Guard away from the governors. Only last week in this very room following one of the hearings, this statement was repeated to me by General Quesada. We have asked Mr. Symington, the Secretary of the Air Force, to give further study to the federalization of the Air National Guard as we believe everything that they say they desire can be done without federalizing the Guard. Mr. Symington has named a committee for the purpose of further studying the subject, just as Mr. Royall, Secretary of the Army, has named a committee to make a restudy of the troop basis plan of the Army. In the light of what has been done, we request that your committee take time to rewrite title II of this bill rather than let the bill be hurriedly passed without the necessary corrections having been made.

With respect to section 202, we wish to invite the attention of the chairman and gentlemen of the committee to the fact that here again a mistake in drafting has been made, since the term "the Air Force of the United States" is used when it is quite evident what is intended is "the United States Air Force." Again I refer to the question asked yesterday by Mr. Kilday in which he pointed out the difference between "the United States Air Force" or "the United States Army" and "the Air Force of the United States" or "the Army of the United States." The way section 202 is now drawn, it includes in the term "Air Force of the United States," without intending to do so, both Reserve components and all Reserve individuals. Yet in the second line, it speaks of authorization for an active-duty strength and includes within the section only Regular Air Force personnel. It is quite evident, therefore, that this section should read "the United

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States Air Force" rather than "the Air Force of the United States." This section says nothing about the personnel strength of the Air Reserve elements. I believe that as it was thought wise to set National Guard and Reserve authorized personnel strengths in title I on the Army side of this bill, then it is just as wise to set similar personnel strengths for the Air Force Reserve elements in title II. We suggest, therefore, an additional section, or two sections; one, to cover the National Guard, another to cover the Reserve.

When the composition of the postwar National Guard was being discussed back in 1945 the Federal Government itself asked the States to take on the job of organizing and creating an air branch of the National Guard on a scale never before dreamed of. The States agreed to do this and they have done a magnificent job.

They agreed to organize and recruit 514 units in 12 wings, and 27 groups, with the necessary aircraft control and warning groups and supporting services. We now have organized 488 of these units in 43 States, Hawaii, Puerto Rico, and the District of Columbia. In other words, 95 percent of our unit goal has been federally recognized. We have recruited, voluntarily, 36,769 officers and men.

There is one other thing I want to say about the Air Guard at this time:

General Stratemeyer, the commanding general of Continental Air Command, himself has said that the Air National Guard represents two-thirds of the fighter defenses of the continental United States.

Some of you gentlemen may recall the 20th of January. On that day, if you were present for the inaugural ceremonies and parade, you saw 300 fighter aircraft of the Air National Guard sweep over this city in aerial formation. And they represented only a fraction of the fighter aircraft that the Air Guard can mount. These fighter planes came from 25 States and the District of Columbia.

The Air Force Reserve at present is practically on paper only. Yet the Air Force Reserve is under the direct supervision and control of the Regular Air Force. I don't have to tell you how the Reserves are complaining at the lack of interest in their program by the Army and Air Force. This committee has heard those complaints for years. Right now, more and more fine young Air Force Reserve pilots and technicians are beating at the doors of the Air National Guard trying to get in. They want to be part of a going concern.

But here we have a proposal which would scrap this fine, going concern of the Air Guard and ask this Congress and this Nation to put all of their faith in glowing promises and a paper organization.

Now, gentlemen, that is no reflection upon the Reserve whatever, but it is a definite reflection upon the Regular Air Establishment which has failed to do their duty by the Air Reserve.

I think this is a slap in the face to the National Guard. In all my years in military life this is the first time I have ever heard of being penalized for accomplishing a mission successfully.

As stated above, these sections must be rewritten.

Section 203 is designed to authorize 24,000 serviceable aircraft.

The only thing we would like to point out with respect to this section is, we would like to know if this language includes aircraft for all organizations of the National Guard and the Organized Reserve,

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because there is nothing in the section which indicates whether it does or does not.

We now come to section 301—Appropriation authorization. A careful reading of this section will indicate that it authorizes appropriations necessary to carry out the purposes of this act, but unless this bill is so amended as to provide for a strength of National Guard and Organized Reserves in the Air Force of the United States, which the bill does not now do, this authorization covers only the Regular Air Force. We do not believe this is the intent of the committee.

I come now to section 302, which is headed "Saving provision." The National Guard strongly supports the plan for unification of the forces within the National Military Establishment. We support the principle that the Secretary of Defense should be given additional authority and stronger control than he now has under Public Law 253. Notwithstanding our position on these matters, we are of the opinion that section 302 should not be enacted into law as at present drafted. As we read this section, it would make a czar or dictator of the Secretary of Defense. With the authority proposed in this language, the Secretary of Defense could in our opinion cancel out every other provision of the bill. We believe the section should receive further careful study and be rewritten. To enact it as now drawn might defeat the purpose of the legislation that is being proposed.

Mr. Chairman, we are very grateful to you for giving us this opportunity to be heard.

And I would like now, if you will permit us to do so, to have the committee hear General Cramer with respect to what has actually been accomplished in 2 years in the Guard. He has brought a chart, or charts, that will take him only a few minutes to go over.

The CHAIRMAN. Just before we do that, may I make this statement:

To sum up your observation on this bill and the defects from your viewpoint that have been disclosed by your statement, I think you are clearly justified in concluding that the bill has been very poorly drawn.

I thoroughly agree with you in one section of your comment with regard to section 302.

General RECKORD. Yes, sir.

The CHAIRMAN. I think your interpretation is absolutely correct. I think it would make a czar or dictator of the Secretary of Defense. I am glad that I find myself thinking along that line like you do. Go ahead with your next witness, unless there are some questions by members of the committee.

(No response.)

The CHAIRMAN. General, I want to thank you for your statement. It is a very fine statement, indeed. I hope I will be able to keep the difference in mind between the Air Force of the United States and the United States Air Force.

The CHAIRMAN. Now, General, you make to the committee any statement you desire to in reference to the bill.

General CRAMER. Thank you, Mr. Chairman.

The CHAIRMAN. Give your official position in the Military Establishment.

General CRAMER. My name is Kenneth F. Cramer, major general, Chief of the National Guard Bureau.

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STATEMENT OF MAJ. GEN. KENNETH F. CRAMER, CHIEF OF THE NATIONAL GUARD BUREAU

General CRAMER. In a period between the wars, the Air National Guard, which was at that time a part of the National Guard, consisted of 29 observation squadrons with a total personnel of about 4,800, manning 252 airplanes of the old observation type, mostly Douglas. These squadrons were largely attached to division aviation for observation purposes.

When World War II had been completed and the task of reorganizing the National Guard initiated, we were assigned some 12 fighter wings, in 27 groups and in 84 squadrons, with 72 of these squadrons being fighter squadrons and 12 being light bombardment aviation. Likewise, 24 of the group were fighter groups and 3 light bombardment groups. At the same time we were also assigned a 12-aircraft control and warning group set-up, with supporting units to round out the picture.

I would like to have the first chart, showing the tactical units.

(Chart exhibited.)

Questions were asked yesterday, or the day before, relative to the location of some of the units of the Air National Guard. This map here shows the location of the 12 tactical wings, the 27 tactical groups, and the 84 squadrons of the Air National Guard. Each State, each Territory, and the District of Columbia, has either a fighter or a light bombardment squadron.

After that distribution had been made, the remainder of the strength allotted to the Air National Guard was divided among the States and Territories generally on the basis of the military populations of the various States.

That gives you the picture, gentlemen, of the 12 wings. And may I say at the present time that of the 12 wings, 8 are completely organized, excepting in one case for an aviation engineer company in Michigan which is in the process of organization, and 4 wings are almost completely organized. Twenty-six of the group are organized, and one group in Pennsylvania is in the process of being organized.

Now, if you will show the locations——

Mr. KILDAY. Is this the way it exists, or is this the way it is planned, General?

General CRAMER. This is the way it exists, sir.

Mr. JOHNSON. Could I ask a question there?

General CRAMER. Yes, sir.

Mr. JOHNSON. Those Twelfth and Fourteenth Air Forces—are they similar numbers to the Regular Air Force?

General CRAMER. No, sir. That is confusing, Mr. Johnson. It might very well have been left off. But it shows that, for instance, in the Fourth Air Force, where you reside—that section—we have a wing in the Northwest: In the States of Montana, Idaho, Washington, and Oregon; we have a wing in northern California, which also includes Nevada and Utah; then a wing in southern California, which includes the State of Arizona, I would say.

Mr. JOHNSON. Well, does the Fourth Air Force refer to the National Guard Air Force?

General CRAMER. No, sir.

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Mr. JOHNSON. Or does that refer to the Regular Air Force?

General CRAMER. It refers to the Regular Air Force.

The CHAIRMAN. I understood you to say that practically every State, except probably one or two, had established a National——

General CRAMER. Every State, Mr. Chairman, now has a federally recognized unit of the Air National Guard.

The CHAIRMAN. Now, how does a State proceed to get one? Do they apply to you, or who do they apply to?

General CRAMER. The original allocation was made in the manner that I just described, namely, either a fighter squadron or a light bombardment squadron to each State. Then the remaining units of the 514 were allocated on the basis of population. They were then accepted by the governors under the provisos which General Walsh earlier referred to. Having accepted the allotment, then the adjutant general of each State makes application to the Chief of the National Guard Bureau for specific authority to organize the unit previously allotted and accepted. They then go through the period of preorganization and upon the completion of that period, which is within 60 days of the request for authority to organize, they are presented for Federal recognition before a board of Regular Air Force officers.

The CHAIRMAN. And you are the officer that they get in touch with, and you in turn get in touch with the Army and the Air Force in carrying out the policy?

General CRAMER. Yes, sir.

The CHAIRMAN. Everything in the National Guard—the Ground Force and the Air Force—is channeled through your office, and you have direct command—I wouldn't say direct command, but you have the supervision and administration and the carrying out of the rules and regulations adopted by the Army and the Air Force. It all comes through you.

General CRAMER. Yes, sir; that substantially defines the duties of the Chief of the Bureau, Mr. Chairman.

Mr. HÉBERT. Mr. Chairman, may I ask a question of the General?

The CHAIRMAN. Mr. Hébert.

Mr. HÉBERT. General, as I understand it you have 48 National Air Guard units.

General CRAMER. Fifty-one, sir.

Mr. HÉBERT. Fifty-one?

General CRAMER. Yes, sir.

Mr. HÉBERT. Including the District of Columbia and Hawaii?

General CRAMER. Yes, sir.

Mr. HÉBERT. And they are subdivided into 27 Air Guard groups; is that correct?

General CRAMER. Well——

Mr. HÉBERT. I just wanted to reconcile the figures of 51 units and 27 groups.

General CRAMER. Let me restate that, Mr. Hébert: There are 51 States and Territories in which there is at least one squadron of a fighter or a light bombardment type, with certain allied units which are organic to the squadron. Then the remainder of the units, of the 514, are allocated on the basis of population and go to make up certain tactical organizations such as the 12 wings and the 27 groups, as well as the 12 aircraft control and warning set-ups, to which we have referred to here.

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Mr. HÉBERT. Where do you arrive at the figure of 27 groups?

General CRAMER. Those, Mr. Hébert, are the groups comprising two or more fighter or light bombardment squadrons.

Mr. HÉBERT. In other words, you can have three or four State units merged into one group?

General CRAMER. Yes, sir; we do that, as a matter of fact.

Mr. HÉBERT. I see.

General CRAMER. That is, excluding Hawaii and Puerto Rico, the States support—well, there are 48 States and the District of Columbia—12 tactical wings and 27 tactical groups.

Mr. JOHNSON. Could I ask one question, Mr. Chairman?

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. General, in every State the adjutant general has supervision of the Air Forces and the Ground Forces. They don't have a separate air arm in the States—any of them—is that correct?

General CRAMER. That is correct. Under the governor of each State, the adjutant general heads the military department and is responsible for the organization and administration within that State of both the Army National Guard and the Air National Guard. That is correct.

Mr. VAN ZANDT. Mr. Chairman——

Mr. JOHNSON. Then, your contact is with the Ground Forces and with the Air Forces in Washington?

General CRAMER. Yes, sir.

Mr. JOHNSON. You are the responsible person there, as the chairman pointed out.

General CRAMER. Yes, sir.

The CHAIRMAN. Mr. Van Zandt.

Mr. VAN ZANDT. General, with respect to the personnel, are the pilots all veterans of World War II?

General CRAMER. The commissioned personnel, Mr. Van Zandt, is secured from among people who held a similar position, or a position of corresponding or equal responsibility during the war. They must either have been commissioned personnel, or they must have been noncommissioned officers in the first three grades.

Now, that means that at the present time that all officers in the Air National Guard—and the same is true on the Army side—with the exception of a few dentists, doctors, and chaplains, who are specialists, are those who have had previous service in World War II.

Mr. VAN ZANDT. Well, is it true that your pilots are all combat veterans?

General CRAMER. A very, very large proportion of the pilots are combat veterans; yes, sir.

Mr. VAN ZANDT. What about the enlisted personnel in connection with maintenance?

General CRAMER. That is likewise true.

On the Army side, 30 percent of our enlisted personnel are World War II veterans, which means that practically all of our noncommissioned officers are World War II veterans.

I haven't the exact figures for the Air National Guard, but the ratio there, Mr. Van Zandt, is noticeable higher.

Mr. VAN ZANDT. How many hours a month do these pilots put in?

General CRAMER. At least 8½, and as much as 12, as a rule.

Mr. VAN ZANDT. That is all, Mr. Chairman.

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The CHAIRMAN. General, would it embarrass you if I asked you one or two questions in reference to the statement of General Reckord?

General CRAMER. Would it embarrass me, sir?

The CHAIRMAN. Yes.

General CRAMER. No, sir.

The CHAIRMAN. All right.

What is your viewpoint in reference to the hesitancy of the committee reaching a decision until the achievements of these two boards set up by Secretary Royall and Secretary Symington have had an opportunity to go over the matter?

General CRAMER. Mr. Chairman, with respect to that general question, we of the National Guard, and particularly those of us in the National Guard Bureau, are desirous of having some of these questions solved at a very early date.

Now, without desiring to go too much back into the history of the organization of the National Guard, the very day following the date on which I was sworn in as Chief of the Bureau, the question of the federalization of the National Guard was proposed. I came to Washington, as I conceived it, to do a job with respect to the organization of the National Guard. The next day the federalization of the National Guard was proposed. And I have had to contend continuously and advance the organization of the guard under that handicap.

I feel that what has been accomplished is a remarkable tribute to the fact that the people in the various States, and out in the field, refuse to be discouraged under those conditions and circumstances.

Mr. Chairman, I would like very much to have some of these problems decided at a very early date.

The CHAIRMAN. You mean by enacting some bill, or by waiting for the report?

General CRAMER. Well, either or both, Mr. Chairman, in the judgment of the committee.

The CHAIRMAN. What is running through my mind is this: It seems to be the drift of thought in connection with these matters that we might go into that field ourselves somewhat. We have already two and one more from this committee might not muddy the water any more than it will be. It might be a good idea for this committee to have a subcommittee appointed to go into this whole question of Reserves, so we can keep pace with the times and have a little inquiry about it before we do anything in regard to this matter.

General CRAMER. Mr. Chairman, may I add further that we could continue to operate——

The CHAIRMAN. Oh, yes.

General CRAMER. Under the same conditions that we have been operating.

The resolution of these questions is important with respect to the future of the guard as a whole. And I address myself to that particular point and trust that your committee will come up with an early decision on some of these matters.

The CHAIRMAN. You put the same construction on the language here commented on by General Reckord that he does.

General CRAMER. Substantially so; yes, sir.

The CHAIRMAN. You find yourself in agreement with him on that construction?

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General CRAMER. Yes, sir.

The CHAIRMAN. You, then, reach the conclusion that it would not be under the terms of this bill necessary to carry out the Gray Board's report because this would accomplish exactly what the Gray Board reports——

General CRAMER. I think there is a very strong likelihood of that under the provisions of the present bill.

The CHAIRMAN. What?

General CRAMER. There is a very strong likelihood of that under the provisions of the particular bill in question.

Mr. KILDAY. Mr. Chairman.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. Whether likely or not, is it possible?

General CRAMER. Sir?

Mr. KILDAY. Whether likely or not, it is possible under the terms——

General CRAMER. Quite possible, in my opinion, Mr. Kilday.

Mr. KILDAY. Under the legal construction of the terms of this bill.

General CRAMER. Yes, sir.

Mr. HÉBERT. You are directing yourself to the Air Force question?

General CRAMER. Yes, sir.

The CHAIRMAN. Yes, sir.

Mr. HÉBERT. It couldn't be accomplished under the present language for the Ground Force.

General CRAMER. No, sir.

The CHAIRMAN. There is no doubt about it.

Then, you think this accomplishes practically what has been written in the paper that the Gray Board made, recommending federalization, or it leaves an opportunity for the Secretary to do so?

General CRAMER. It certainly moves in that direction and admits of that possibility, Mr. Chairman, in my opinion.

The CHAIRMAN. Then, you think it would be proper to spell out in this bill 27 National Guard air group units, and so many Reserves, plus the men?

General CRAMER. I think that is a much preferable course.

The CHAIRMAN. Then, there would be absolutely no doubt that it was the intention of Congress to establish separate and distinct from the Regular air group a National Guard?

General CRAMER. Beyond doubt, sir.

The CHAIRMAN. And then it would be administered in accordance with section 60 of the National Defense Act.

General CRAMER. Yes, sir.

The CHAIRMAN. That would make it positive and certain, so there would be no doubt about it.

General CRAMER. Correct.

The CHAIRMAN. Any questions by any other members of the committee?

The CHAIRMAN. Mr. Durham.

Mr. DURHAM. General Cramer, were you taken into consultation in the preparation of the budget—that is, your department?

General CRAMER. Yes, sir.

Mr. DURHAM. You were?

General CRAMER. Yes, sir.

Mr. DURHAM. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Havenner.

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Mr. HAVENNER. Mr. Chairman, I can't read the captions on that map from here, but the way the lines are distributed on the map it would appear that the Pacific coast line is not going to receive anything like the amount of protection from the standpoint of national defense that the Atlantic coast line is receiving under this program. I am just wondering whether that is true, and if it is true whether it would be possible to give some consideration to it, perhaps in this subcommittee that you are suggesting.

General CRAMER. Mr. Chairman, I think the chairman himself asked a question of the United States Air Force of the same nature.

May I say—speaking now for the National Guard Bureau, and for the National Guard—that we have the capability, sir, of organizing a substantial number of additional squadrons for the Air National Guard. Several States have requested authority to proceed with such organization. If authority is granted to the National Guard, we have that capability, Mr. Chairman. And that will be our answer to Mr. Havenner.

Mr. HAVENNER. They weren't taken care of at the beginning of this last war, Mr. Chairman. I live right at the Golden Gate, and I can tell you——

The CHAIRMAN. All right.

I will recognize our other colleague from California, Mr. Doyle. Any questions?

Mr. DOYLE. Yes, Mr. Chairman.

The CHAIRMAN. Speak up. California is in the picture.

Mr. DOYLE. Isn't it a fact, General, that your office has a record of the fact that California is asking for additional units? I am from southern California, and I have personal knowledge of the fact that that is true. Isn't it a fact?

General CRAMER. That is true, to the best of my recollection, sir.

Mr. DOYLE. So that under proper authorization, if there was activity enough from California, there could be additional units from that State?

General CRAMER. Yes, sir. That is true of several other sections. I think the State from which the chairman comes is initiating a request. Alabama has initiated a request.

The CHAIRMAN. Yes; but that is what is worrying me. May I interrupt. If we spell out this, and just say 27, both California and Georgia might be left out of the picture.

General CRAMER. May I comment on that?

The CHAIRMAN. And that sort of worried me, because I am hoping to be in on this picture somewhere.

General CRAMER. Mr. Chairman, if it is the decision of your committee to spell that out, we would like the opportunity to present to you an authorization sufficiently high above the 27 so we can do just that.

The CHAIRMAN. Then you are going to fix it so that everybody will be satisfied?

General CRAMER. Yes, sir.

Mr. DURHAM. I think the general, in his plans, has planned it on the strategic situation. You certainly planned it along that line, and not the question of location in a certain State.

General CRAMER. In answer to that, those decisions, sir, are made at a higher level than in the National Guard Bureau. The original

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plan was conceived by the United States Air Force, and I am sure that they took into consideration their strategic conceptions prevalent at that time.

We do not participate in that type of planning, but that having been decided our work begins after those decisions have been made.

Mr. DURHAM. You certainly should participate in it, if you don't.

General CRAMER. Beg pardon?

Mr. DURHAM. Certainly you have the authority, or a certain amount of authority, for the location of these units. Aren't you taking on the strategic planning of this internal defense?

General CRAMER. We are getting into another matter when we get into internal security or internal defense.

Mr. DURHAM. Well——

General CRAMER. But the location of these, the specific locations of these, is a matter upon which both the various States and the United States Air Force have come into agreement before any particular organization has been located.

Mr. DURHAM. They are more than just training units.

General CRAMER. Oh, yes, sir. They have a very definite mission.

The CHAIRMAN. Mr. Doyle.

Mr. DOYLE. General, as I understand it, though, the location of these units is entirely a decision in the hands of the governor and the adjutant general in the respective States.

General CRAMER. That is not entirely so. The specific locations are determined in the first instance through the availability of the population necessary to man and maintain the units. Then there is some thought given to the availability of facilities on which these units can be based. Thereafter the exact location is a matter in which the governors and the United States Air Force, or the governors through the adjutants general and the United States Air Force, must be in agreement insofar as the specific location of any units is concerned.

The CHAIRMAN. Any further questions, Mr. Doyle?

Mr. DOYLE. No.

The CHAIRMAN. Mr. deGraffenried, any questions?

Mr. DEGRAFFENRIED. I would like to ask what units at present are located in Alabama and what request for additional units has been made?

General CRAMER. The headquarters of the One Hundred and Seventeenth Fighter Group; headquarters detachment of the Two Hundred and Seventeenth Air Service Group, Fighter; One Hundred and Sixtieth Fighter Squadron; One Hundred and Sixtieth Utility Flight; One Hundred and Sixtieth Weather Station; Detachment B, Two Hundred and Seventeenth Air Service Group, Fighter; One Hundred and Sixth Light Bombardment Squadron; One Hundred and Sixth Utility Flight; One Hundred and Sixth Weather Station; Detachment C, Two Hundred and Sixth Air Service Group, Light Bombardment.

These are units which are now based in Alabama, comprising 100 percent of the original allocations to Alabama, sir.

I have been in communication with your adjutant general, and he has asked for consideration with respect to the locating of additional squadrons in Alabama.

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Mr. DEGRAFFENRIED. Is that the usual group, located in Alabama? Does that about conform to the other groups that have been located in other States?

General CRAMER. Yes, sir; because the organic allocation to Alabama would be one squadron, and that has been boosted in accordance with Alabama's over-all population, and the relationship of that population to the relationship of the population of the rest of the United States.

The CHAIRMAN. Mr. Clemente, any questions?

Mr. CLEMENTE. No, sir.

The CHAIRMAN. Mr. Winstead?

Mr. WINSTEAD. No.

The CHAIRMAN. Mr. Price?

Mr. PRICE. No.

The CHAIRMAN. Any members any questions?

Mr. ANDERSON. Let us see the rest of the map.

The CHAIRMAN. Oh, yes. Does that cover your statement, General?

General CRAMER. I do have some other points, sir.

The CHAIRMAN. Go right ahead, sir.

General CRAMER. Of the 514 units originally allocated, 95 percent have been organized and federally recognized and the Air National Guard is 100 percent complete in all but four States. In other words, 47 States and Territories have completely organized the units allocated to them.

Of the 58,138 men set as the goal toward which we would move, we have appointed 5,462 officers and enlisted an aggregate of 36,769 officers and men.

Mr. KILDAY. What is that figure that you gave?

General CRAMER. Fifty-eight thousand is the ultimate goal.

Mr. KILDAY. Officers and men?

General CRAMER. Officers and men. We have 36,769, or 63.2 percent enlisted on a voluntary basis. That same figure is 89 percent of the 41,000 for which our present budget provides.

We also have, as far as equipment is concerned, 70 percent of the technical services equipment necessary to completely equip the guard, and 67 percent of the Air Force equipment necessary. We have 80 percent of the airplanes, and 100 percent of the spare engines.

With particular reference to aircraft, we have 2,208 aircraft, of which 1,812 are fighter type—either 47's, 51's, or jet-propelled aircraft, and of the latter category we have 103 in five different squadrons.

We are presently based on 78 different airfields, 16 of which are federally owned, 8 State-owned, and 54 publicly owned either by counties or by minor political subdivisions, or in the case of one airfield, by a private corporation. The facilities from which the Air National Guard is now flying would, if they had to be replaced, that is aside from the Federal facilities, involve a replacement factor of $804,000,000. In other words, gentlemen, we are using fields, State-owned and governmentally owned other than States, that have a replacement value of $804,600,000.

Having secured the leases for these nonfederally owned fields, we have then negotiated in the case of 97 which cover some aircraft control and warning facilities in addition to aircraft service contracts

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covering services rendered by the owners of the airports to the Air National Guard.

I have some other figures here with respect to how we conduct or care for our aircraft, how we handle our supply problems, and how we handle our administrative problems, but I think I will simply make the observation, gentlemen, that all of those matters are handled by personnel from within the Air National Guard. They are employed on a civilian status but they must be members of the National Guard, either commissioned or noncommissioned, and they will go out with the National Guard in the event of its mobilization.

We have been provided by the United States Air Force with 62 percent of the officer and noncommissioned officer personnel necessary to supervise the training and to assist the guard in an instructional capacity.

Now, you might ask me: How do we stand with respect to training because after all training is the purpose for which the National Guard is organized? In the fiscal year 1949, out of 183 field training inspections, and these inspections, Mr. Chairman and gentlemen of the committee, are made by officers of the Regular Air Force, every unit was rated as satisfactory.

Now, in the fiscal year 1948 and 1949, out of 283 annual air-base inspections—performed by Regular personnel as well—267, or 94 percent, were found satisfactory; 14, or 5 percent, were found unsatisfactory; and 1 was nonrated.

General Finch reminds me that there are only two ratings given. The unit is either satisfactory or unsatisfactory.

And these inspections run to all aspects of the situation in any unit. It runs to an inspection of the administration and of the supply and of the training, as well as an inspection of facilities.

I would like to summarize by saying that there has been expended for the purposes of the Air National Guard since it was reorganized the sum of $154,845,000. With that sum we have organized 488 units, or 95 percent of the job accomplished. We have appointed or enlisted 36,769 officers and enlisted men, or 62.3 percent of the job completed. We are training on facilities furnished by governmental agencies, and under the Federal Government, of a replacement value of $804,000,000. And when the program is complete, with the addition of the other units, we will need to have acquired three additional facilities.

Now, we have secured Air Force equipment—it has been issued to us—worth $84,000,000, and technical services and equipment, coming mostly through the Army, of $123,000,000. So we believe, gentlemen, that when you balance that off against the original cost, because much of this equipment was procured on a nonreimbursable basis, you will realize that we feel, and we may take some pride in believing, that a good job of organization has been done by the States and by the National Guard for the United States Air Force in the creation of the Air National Guard within the short period of time which has been available to us.

The CHAIRMAN. General, let me ask you this question: You say some one-hundred-and-some-odd million dollars has been available last year, since the organization?

General CRAMER. Yes, sir; $154,000,000.

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The CHAIRMAN. $154,000,000. How much is in the budget this year?

General CRAMER. $116,000,000, sir—I am corrected; that is $115,000,000.

The CHAIRMAN. And that applies to the Ground and to the Air?

General CRAMER. No, sir. That is Air National Guard only.

The CHAIRMAN. Air National Guard only?

General CRAMER. Yes, sir.

The CHAIRMAN. Now, in the budget, how is it written out? Is it set out separately and distinct as Air National Guard, or is it set out in the Air Corps?

General CRAMER. This is a sum appropriated to the National Guard Bureau for the purposes of the Air National Guard—$115,000,000.

The CHAIRMAN. Did the budget give to you the amount of money that you requested?

General CRAMER. No, sir.

The CHAIRMAN. What amount did you request?

General CRAMER. I can't give you that at the moment, but I will be glad to provide it.

The CHAIRMAN. But you will not be hampered very much by carrying out your magnificient oragnization with what you have in the budget today.

General CRAMER. We can do a job with the money available. We honestly believe we could do a better job with more money.

The CHAIRMAN. Of course. But you won't be very much hamstrung by the amount of money that you have been given today. You will be able to do a pretty good job with that.

General CRAMER. Yes, sir.

The CHAIRMAN. And that is what?

General CRAMER. $115,000,000.

The CHAIRMAN. $115,000,000 for the next fiscal year?

General CRAMER. Yes, sir; 1950, sir. That is fiscal year 1950.

The CHAIRMAN. All right, sir.

Mr. Kilday.

Mr. KILDAY. Of course, sometimes they transfer funds. Unless there is a restriction in the appropriation bill would these funds be subect to transfer?

General CRAMER. In the fiscal year 1946, or 1947—in the fiscal year 1947, I am advised—there was created for the over-all purposes of the National Guard, $110,000,000. A transfer of some $60,000,000 was made for the purposes of the pay of the Army and for the Medical Department. Some of that was subsequently restored to the National Guard Bureau, and I believe that corrective legislation was passed authorizing the transfer, which was made.

Since that time, Mr. Kilday, there has never been a suggestion of any transfer of funds after appropriation to the National Guard.

Mr. KILDAY. What year was that?

General CRAMER. That was in fiscal year 1947.

Mr. KILDAY. Just one more question, General: These men that you have enlisted in the Air National Guard, if they were transferred to the Reserve could they be held to their commissions?

General CRAMER. When an officer accepts a commission in the Air National Guard, or when an enlisted man is enlisted in the Air Na-

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tional Guard, he takes a dual oath. He takes an oath to the governor of his State and he takes an oath to the President of the United States. And we believe that thereby a triple relationship is set up, a relationship which is in time of peace a dual relationship only between the individual and his State, which may be in time of war translated into a relationship between the individual and the Federal Government. Our conclusion is that that being a contractual relationship, it would have to be abrogated, or it would have to be agreed to by the individual in every specific case before that could be accomplished.

Mr. KILDAY. In other words, if a status as a National Guard man was changed, he would be a free agent?

General CRAMER. That is my conclusion, Mr. Kilday.

Mr. KILDAY. That is all, Mr. Chairman.

Mr. ELSTON. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. General, is the National Guard insisting on the same physical standards, particularly for the pilots, that are insisted upon by the Regular Forces?

General CRAMER. Yes, sir.

As a matter of fact, Mr. Elston, the method of federally recognizing our pilots is such that while the initial physical examinations are performed in the States, an accredited flight surgeon must make the examination for the pilots. Now, they are processed through to the National Guard Bureau, and by the Bureau to the United States Air Force, so the surgeons of the United States Air Force pass on the physical fitness of every potential pilot, as well as his other qualifications.

Now, we must appreciate the fact that in the beginning all of these men were AUS or ROTC pilots.

The CHAIRMAN. As a matter of fact, the Air Corps lays out the qualifications and directs the training, and it all comes from a higher echelon than your office.

General CRAMER. That is correct.

The CHAIRMAN. Every phase of it. And you are merely the instrument by which the directives are carried out in all phases of your training, your procurement, and everything, in regard to the National Guard Air.

General CRAMER. That is a fair generalization, Mr. Chairman.

The CHAIRMAN. Of course, you have certain powers.

General CRAMER. Yes, sir. If we were going to explore that subject in detail, I would want to qualify it.

The CHAIRMAN. But as to physical conditions, the hours he has to fly, and the training he has to take, it is all mapped out by General Vandenberg and his group.

General CRAMER. Or is delegated by him to the Continental Air Command; yes, sir.

The CHAIRMAN. Continental Air Command. All right.

Mr. DURHAM. General, do you have to purchase all of your planes out of this allotment of $115,000,000?

General CRAMER. No, sir. That was why I interjected the statement about equipment being available to us on a nonreimbursable basis.

Mr. DURHAM. That is what I understood. That is why I asked you that question.

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General CRAMER. That is right.

The CHAIRMAN. In that connection, do you have any authority to purchase anything that is at all purchased by the procurement set-up in the Air Corps?

General CRAMER. We exercise whatever authority we have through the technical services of the Army through the Air Matériel Command of the Air Force with respect to purchases.

The CHAIRMAN. Can you enter into a contract to purchase this or that type of plane?

General CRAMER. We never have; no, sir.

The CHAIRMAN. Have you the authority to do so?

General CRAMER. I doubt very much if we have it.

Mr. JOHNSON. Could I ask a question, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. JOHNSON. Of that $115,000,000, what proportion is for pay?

General CRAMER. We can give you that in a moment.

Mr. JOHNSON. And also I want to ask you with reference to that, is there enough there so you can keep your men flying enough hours to qualify?

General CRAMER. Mr. Johnson, in that connection there is always a question between what is most desired and what the financial set-up will support.

Now, I am going to have to talk for a moment as an Army officer. I am not an Air Force officer. The Air Force people in the Bureau tell me that in order to maintain the most desirable state of flying proficiency we should support a flying program of approximately 180 hours per year; that is, for combat pilots flying the 47's and the 51's and the 80's, and for nontactical aircraft a lesser time. We have not had sufficient funds to attain the 180 hours, but we have been proceeding under a program calling for 100 to 110 to 125. That is the situation at the present time.

Mr. JOHNSON. Even that is over twice as much—the lower amount—as the ground officer had to take. Forty-eight exercises of an hour apiece is all he has to take.

General RECKORD. Two hours apiece.

General CRAMER. Two hours.

Mr. JOHNSON. Then, the first figure is almost twice as much.

General CRAMER. The total amount of training time, Mr. Johnson, on an hourly basis is 96 during the armory-training period and 92 more or less during the field-training period, or 188 hours.

Mr. JOHNSON. The reason I asked my question was that last summer I had some meetings with some Reserve officers and they claimed there wasn't enough money in the till to take care of the pay, and they would pay them on the basis of about half-time training. Have you experienced that yourself with reference to the flyers?

General CRAMER. In the National Guard, Mr. Johnson, we have always been the happy recipient of much service contributed by the average guardsman above the compensation which he received. So we always have that general proposition in the Guard. We hope it will always continue.

The CHAIRMAN. Thank you very much, General.

Now, we will take a recess until tomorrow morning at 10 o'clock. The other witnesses will be heard at that time.

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General RECKORD. Mr. Chairman, we will take very little time. We are sorry we cut our friends from the Reserve—General Evans and his staff—out of time this morning.

The CHAIRMAN. Well, the general stays here, does he not?

General RECKORD. Right.

The CHAIRMAN. We will give him a chance and let him talk.

(Whereupon, at 12:12 p. m., the hearing was adjourned.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Wednesday, February 2, 1949.

(The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.)

The CHAIRMAN. Let the committee come to order.

This is a continuation of the hearing on H. R. 1437.

When the committee recessed yesterday we had the benefit of the testimony of Gen. Milton A. Reckord.

I understand this morning General Evans——

General RECKORD. Mr. Chairman, if you would permit us just a few minutes, the National Guard can then close.

The CHAIRMAN. All right.

General RECKORD. But we would like just a few minutes.

The CHAIRMAN. All right, sir.

General RECKORD. The purpose being to give evidence to the committee to counteract statements which have been made both by the Gray Board report and subsequently from Air Corps Headquarters to the effect that the State lines are disturbing in that they conflict and interfere with the proper operation of Air National Guard.

Now, we have present to testify in opposition to that statement General Boutwell, of Massachusetts, who commands Air National Guard in New England; Colonel Mackall, of the District of Columbia, who commands as well Air National Guard in Maryland and Virginia, and recently a squadron in Delaware was added; and Colonel Gould, of the State of Maryland, who is a squadron commander.

So we would like you just to hear short statements from these three gentlemen, and then we will conclude.

The CHAIRMAN. Let us take up the Reserve——

General RECKORD. Won't you let these three speak for just a moment?

The CHAIRMAN. All right, then.

General RECKORD. General Boutwell.

STATEMENT BY BRIG. GEN. LOUIS EVANS BOUTWELL, OF BOSTON, MASS.

General BOUTWELL. Mr. Chairman and gentlemen, my name is Louis E. Boutwell. I am commanding the Sixty-seventh Wing of the Air National Guard, taking in all of the New England States.

Some 2½ years ago, as we were being organized, this question of State lines became obviously pertinent. We called a conference of all

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of the adjutants general in New England in Boston, and they all concurred in delegating to me authority to command all those units as far as their training and their tactics is concerned. It was voluntarily granted; and there has never been any trouble or any difficulty in crossing State lines in New England. And I have had the full concurrence of our adjoining wing in New York.

I would like to add this, that a federalization of the National Guard in Massachusetts would destroy the Massachusetts elements. All of them are located on facilities owned by the State or by one of the cities, and all of them are facilities desired by other agencies, and all of them would be lost if we failed to have the local aspects that has maintained our standing in our communities.

The CHAIRMAN. Thank you very much.

General RECKORD. Colonel Mackall, of the District.

STATEMENT BY COL. LAIDLER B. MACKALL, OF THE DISTRICT OF COLUMBIA

Colonel MACKALL. My name is Laidler B. Mackall. I am an attorney here in Washington and also in command of the District fighter group, which includes units in Maryland, Virginia, and recently Delaware, as well as the District of Columbia.

Long before this Gray Board consideration of State lines came up, the matter was considered in my unit, and the other States voluntarily came forward and gave to me the right to command their units for operational training.

I can only repeat what General Boutwell said. My experience has been similar. There has been no trouble whatsoever as regards commanding these other State units. In fact, they have been very enthusiastic and welcomed any plans or operations we have had. We have run off several operations that have included all of these units. Some of them have been planned by my headquarters and some by headquarters in the other States. I issue direct operational orders to the units under my command, and there has never been any hesitation or question about these orders. This state of affairs is common not only here but throughout the Air National Guard.

General RECKORD. If you will permit Colonel Gould, who is a squadron commander in Maryland, to say a word.

STATEMENT BY COL. ROBERT L. GOULD, OF THE STATE OF MARYLAND

Colonel GOULD. Gentlemen, my name is Robert L. Gould. I am commanding officer of the One Hundred and Fourth Fighter Squadron in Maryland.

Looking at it from the level of a squadron commander, the lowest unit in command, State lines interpose no objection at all, or no difficulty in operation. As a matter of fact, the Air National Guard units and the States themselves have done everything possible to implement operation across State lines. The only hesitancy has been on the part of the Regular Establishment in crossing lines. We have worked in harmony with the group and the wing under whose command we fall.

The CHAIRMAN. Thank you very much.

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General RECKORD. Now, Mr. Chairman, General Finch of the Bureau is here, and General Fox, who is adjutant general of West Virginia, is here—but with your permission we will hand to the chairman, or to the clerk, suggestions along the line the chairman just made which we were asked to do a day or two ago.

Following the procedure in title I, we have suggested redraft of title II, which will do——

The CHAIRMAN. Let us read that now.

Mr. Short, the committee welcomes you back. We missed you when you were away, but we know you will soon catch up with us.

Give Mr. Short a copy of the bill—that is, the original bill.

Mr. HARPER. He has the original bill before him.

The CHAIRMAN. All right. Now, let us read the amendment.

We are considering title II, Mr. Short, on page 4. We finished with the Army title. Mr. Blandford, read section 201 now. Let us see what amendments there are.

Mr. BLANDFORD. Section 201 as it appears in H. R. 1437 is as follows [reading]:

The United States Air Force shall have an authorized strength of 70 Air Force groups and 22 separate Air Force squadrons, supplemented by 61 Air Force Reserve groups, together with necessary supporting and auxiliary units. The Air Force of the United States is authorized to consist of the number of organizational units, with their installations and supporting and auxiliary elements, including tactical, administrative, logistic, Air Transport, and training, as may be determined by the Secretary of the Air Force consistent with the numbers of personnel and aircraft hereinafter authorized.

The CHAIRMAN. Now, General, you are proposing an amendment to that, are you?

General RECKORD. Yes, sir.

The CHAIRMAN. And your amendment is in the sheet that you have just handed out.

Now, let the staff member read the amendment that you are proposing.

General RECKORD. Mr. Chairman, before the staff member reads, please let me say that we have no desire whatever to rewrite this bill.

The CHAIRMAN. That is all right. Go ahead.

General RECKORD. In offering these amendments, we want to be helpful.

The CHAIRMAN. That is right.

General RECKORD. Any language the committee determines upon we will accept.

The CHAIRMAN. Let us see what you propose.

Mr. COLE. Mr. Chairman, I understand the general is submitting these amendments at the request of the chairman?

General RECKORD. Yes, sir.

The CHAIRMAN. That is right.

Your proposal is to strike out section 201 as written in the bill and offer this in lieu thereof?

General RECKORD. Yes, sir.

The CHAIRMAN. Now, read section 201 as suggested.

Mr. BLANDFORD. The amendment as suggested in lieu of section 201 is as follows [Reading]:

The organized peace establishment of the Air Force of the United States, including the United States Air Force, the Air National Guard of the United States, and the Air Force Reserve, shall include all of those air units and other air

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organizations, with their installations, and supporting and auxiliary elements, including combat, training, administrative, and logistic, and all personnel, including those not assigned to units, necessary to form the basis for a complete and immediate mobilization for the air national defense in the event of national emergency.

The CHAIRMAN. Now, General, as I said yesterday, there is always confusion about Army of the United States and the United States Army. Now, we have here—

the Air Force of the United States, including the United States Air Force * * *.

Now, can't we begin to write in legislation just one name, without two or three names?

General RECKORD. Mr. Chairman, I suggest you don't attempt that in this bill.

Mr. KILDAY. Mr. Chairman.

The CHAIRMAN. Yes, sir.

Mr. KILDAY. Those terms are specifically defined in the National Defense Act and well understood. There is a legislative definition, not as to the Air Force but as to the Army. This would be only placing in the Air Force the same designations we have had in the Army.

The CHAIRMAN. All right.

General RECKORD. That is correct, Mr. Chairman.

Mr. SHORT. It would be in keeping with existing law.

General RECKORD. Yes, Mr. Short.

Mr. COLE. Mr. Chairman, let me inquire if there is any place in the statute an expression creating the United States Air Force.

General RECKORD. Oh, yes, sir; in the Unification Act.

Mr. COLE. Have you studied it rather closely, and could you point out just where?

General RECKORD. Yes, sir.

This is found in section 207 (c) of Public Law 253—it is found on page 9, if you have a copy.

The term "Department of the Air Force," as used in this act shall be construed to mean the Department of the Air Force at the seat of government and all field headquarters, forces, Reserve components, installations, activities, and functions under the control or supervision of the Department of the Air Force.

(d) There shall be in the Department of the Air Force—

well, that refers to the Under Secretary.

The term "United States Air Force" is used in the section as meaning the regular force.

Shall I read that, Mr. Cole?

Mr. COLE. No. I just wanted you to call my attention to where it was.

General RECKORD. If you will follow through on page 9, section 207, you will get the point clear.

The CHAIRMAN. All right. Then the committee can understand, when you use the term "the Air Force of the United States" that includes the Regular United States Air Force and the Air National Guard?

General RECKORD. Yes, sir; and the Air Reserve.

The CHAIRMAN. And the Air Reserve.

General RECKORD. Yes, sir.

The CHAIRMAN. Now, General, let me ask you this: In the bill we said that the United States Air Force shall have an authorized strength of 70 Air Force groups.

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General RECKORD. Yes, sir.

The CHAIRMAN. Now, I don't see where you put any 70 in this.

General RECKORD. Well. I have followed what the committee approved tentatively in title I. The Army side does this very same thing. And then in the next three sections proposed we come to the strengths.

The CHAIRMAN. You come to the 70 groups?

General RECKORD. We don't mention the 70 groups, but you can have all the groups that Congress will propose or authorize.

The CHAIRMAN. Well, I think it is highly important that we have a minimum. I think the committee would like to have it somewhere spelled out that the minimum is 70 air groups. We will put that in.

General RECKORD. Mr. Chairman, we honestly were not attempting to rewrite the bill. We were simply attempting to give a guide.

Mr. COLE. Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. Before you leave that point that I am trying to have developed, I still am unable to find where in the statute there is any definition of the United States Air Force.

Now, the section to which the general has directed our attention does not define the United States Air Force. It says——

General RECKORD. Mr. Cole, you may be correct on that, sir, because there is an effort being made in the Pentagon now to get up a list of definitions and have it brought up to Congress to have it enacted into law.

Mr. COLE. It would seem to me if in this bill we are going to refer to the United States Air Force there should be either in this bill or in existing statute some definition of what we are talking about.

General RECKORD. Well, Mr. Cole, if you go back to the National Defense Act, section 1, we have this language:

The Army of the United States shall consist of the Regular Army, the National Guard of the United States, the National Guard while in the service of the United States, the Officer Reserve Corps, the Organized Reserve, and the Enlisted Reserve Corps.

There are no definitions.

Mr. COLE. It says what the United States Army shall consist of. That is a definition in itself.

There is no comparable definition of the United States Air Force on the statute books, comparable with this expression of the Defense Act that you just read.

General RECKORD. Well, you may have a point there.

Mr. JOHNSTON. Will the gentleman yield for a question there?

Mr. COLE. All right.

The CHAIRMAN. Mr. Johnson of California.

Mr. JOHNSON. I think in section 208 the bill goes into that. I don't know whether it goes into that enough in detail, but on page 10 it says:

The United States Air Force is hereby established under the Department of the Air Force. The Army Air Force, the Air Corps, United States Army, and the General Headquarters Air Force (Air Force Combat Command), shall be transferred to the United States Air Force.

It then tells about the Chief of Staff and other details.

Mr. COLE. That still doesn't say——

General RECKORD. I think, Mr. Johnson, Mr. Cole has a good point there.

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But I do know the matter is being considered in the Pentagon at the present time, with the idea of coming to Congress with a series of definitions.

Mr. KILDAY. Will the gentleman yield?

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. I think the gentleman from New York is correct on that. If we are going to use these terms we ought to paraphrase section 1 of the National Defense Act, relating it to the Air Force.

The CHAIRMAN. Well, it looks like to me we should put some positive definition as to what constitutes the United States Air Force, and put it right in here.

Mr. SHORT. Because your first section of the National Defense Act tells what the United States Army is.

General RECKFORD. I will be glad to redraft this, if the committee wishes.

The CHAIRMAN. Well, our staff will help us on that. I think they understand what we have in mind.

General RECKORD. So it is the sense of the committee at this point that the words "United States Air Force" should have a definite and positive meaning.

General RECKORD. Yes, sir.

The CHAIRMAN. Now, what would that meaning be?

General RECKORD. The United States Air Force should——

The CHAIRMAN. Be the Regulars, the National Guard, and the Reserve?

General RECKORD. Should be the Regular Air Force.

The CHAIRMAN. Yes.

General RECKORD. The Air Force of the United States, Mr. Chairman——

The CHAIRMAN. That is right.

General RECKORD. Should be the Regular Air Force, the National Guard Air Force, and the Reserve Air Force.

The CHAIRMAN. That is right.

Mr. COLE. Then, what should the United States Air Force be?

General RECKORD. The United States Air Force is the Regular Air Force.

The CHAIRMAN. That is right.

General RECKORD. Only.

The CHAIRMAN. That is right.

Mr. COLE. Is that in harmony with the definition of the United States Army?

General RECKORD. Yes, sir; exactly.

The CHAIRMAN. That is right.

Then we define that the Air Force of the United States shall include the Regular United States Air Force, the Air National Guard, and the Air Force Reserve.

General RECKORD. Yes, sir.

The CHAIRMAN. And then whenever we use the words "United States Air Force," that is the Regular.

General RECKORD. Yes, sir.

The CHAIRMAN. I think we all understand that.

General RECKORD. Mr. Chairman, you should include the Air ROTC in there.

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The CHAIRMAN. All right. I think we have it.

Mr. Harlow and Mr. Blandford, you fix up something that will bring that out.

Now, let us read section 202, Mr. Blandford, please, sir.

Mr. BLANDFORD (reading):

SEC. 202. The Air Force of the United States is hereby authorized an active-duty strength——

The CHAIRMAN. No; let us read our amendment.

Mr. SHORT. The suggested revisions—

There is hereby authorized * * *.

Mr. BLANDFORD (reading):

(a) There is hereby authorized for the Air Force of the United States an active-duty personnel strength of 502,000 officers, warrant officers, and enlisted persons, exclusive of such 1-year enlistees as are or have been authorized by law, officer candidates, aviation cadets, and personnel of the Reserve components on active duty for training purposes only, persons paid under the appropriations for the Air National Guard and Air Force Reserve, and personnel and units of the Reserve components ordered to active duty in an emergency hereafter declared.

General RECKORD. That is practically a rewrite of the section pertaining to the Army in title I.

The CHAIRMAN. Now, that is the Regular.

General RECKORD. Yes, sir.

The CHAIRMAN. Is that the Regular?

General FINCH. That is not the Regular.

General RECKORD. This is the total, over-all strength for the whole force.

Mr. BLANDFORD. On active duty.

General RECKORD. On active duty.

It is just as you did——

Mr. SHORT. With the exceptions that you have just enumerated.

General RECKORD. Yes, sir, but the total on active duty cannot be more than the figures stated herein.

The CHAIRMAN. Well, now, let us clear that up. In the Draft Act we put the total strength of the air at 502,000.

General RECKORD. Yes, sir.

The CHAIRMAN. All right. That didn't include the National Guard and that didn't include the Reserve. That included what we had in mind the Regular Establishment would be.

From the language you have here, this would include the Reserve and the Guard——

General RECKORD. Ordered to active duty.

The CHAIRMAN. Now, the Air Force is the whole thing. That is the umbrella.

General RECKORD. Yes, sir.

The CHAIRMAN. That is the top.

General RECKORD. Yes, sir.

The CHAIRMAN. Now, when you say the Air Force it should embrace three things: The Regular, the Guard, and the Reserve. And when you use the words "The United States Air Force" that means the Regular Establishment. Therefore you have restricted it only to the Regular group when you use that word "Air Force of the United States."

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General RECKORD. Mr. Chairman, if you will go back to section 102 you will see that it is written in like manner. You give the Army of the United States an active-duty personnel strength. This section gives the Air Force——

The CHAIRMAN. General, why do we use the words, in this connection, "The Air Force of the United States?" Why not use the words "The United States Air Force," which would be the Regular, and which would be active duty?

General RECKORD. We did it because in section 102 you used the term "The Army of the United States," which includes the Regular Army and those from the Reserve who are on active duty. This is an authorization for active duty strength.

The CHAIRMAN. Mr. Blandford.

Mr. BLANDFORD. I was going to paraphrase what General Reckord said. What the figure of 502,000 officers, warrant officers, and enlisted persons would include would be those persons on active duty in the Air Force, whether they were Regulars or Reserves.

General RECKORD. That is all.

Mr. BLANDFORD. It would not include people who were on active duty for a 2-week period of training, or would not include 1-year enlistees or officer candidates or aviation cadets. It does not include the figures that you have authorized for the Air National Guard, or will authorize for the Air National Guard; nor does it include the Air Force Reserve. But should those people come on extended periods of active duty during peacetime they would be included in the overall authorization of 502,000.

The CHAIRMAN. Yes. But the Air Force of the United States in the previous paragraph is larger than it is in this paragraph because it embraces the Guard, the Regular, and the Reserve. Then you come down to the next section and say:

There is hereby authorized for the Air Force of the United States an active duty * * *.

My point is, why shouldn't it be:

There is hereby authorized for the United States Air Force an active-duty personnel strength of 502,000 * * *.

General RECKORD. Mr. Chairman, if you did that then you would not have any authority for bringing any Reserve officers or enlisted personnel into active service.

Mr. KILDAY. Mr. Chairman——

The CHAIRMAN. Of course you would. There is no restriction on that because it is made up of it now. The 502,000 is made up of Reservists who are called to active duty.

Mr. KILDAY. Mr. Chairman, I had the same confusion, but if you read the last sentence of this section I think it will clear up your mind because it is exclusive of.

Now, you could have your total of 502,000 full authorized strength on duty, consisting of maybe all your enlisted men as Regulars so you would be up to your full authorized strength. The Guard can only be called in the event of an emergency, and the last sentence here says this figure of 502,000 is exclusive of personnel and units of the Reserve components ordered to active duty in an emergency hereafter declared. . .

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Mr. SHORT. But in normal peacetime 502,000 is the maximum, whether they are from the Regular, the National Guard, or Reserve.

General RECKORD. Yes, sir; the maximum that can be ordered to active duty.

The CHAIRMAN. But that doesn't constitute all of the Air Force of the United States. That is my point.

General RECKORD. No, sir; it doesn't.

The CHAIRMAN. All right.

General RECKORD. If you will read the following sections you will get that.

The CHAIRMAN. All right, let us see.

General RECKORD. This is in line, Mr. Chairman, with what was done in title I.

The CHAIRMAN. All right.

Go ahead, Mr. Blandford.

Mr. BLANDFORD (reading):

(b) Of the active-duty personnel strength authorized in subsection (a) of this section, not to exceed 35,000 may be Regular Air Force officers, and 4,800 may be Regular Air Force warrant officers.

General RECKORD. That was taken from the language of the section in the bill.

The CHAIRMAN. That is right, section 202. Now, (c)——

Mr. COLE. Mr. Chairman, on that point.

The CHAIRMAN. Yes.

Mr. COLE. If we are in this bill to define the United States Air Force, which will mean the Regulars, shouldn't we then say this, that this 35,000 may be United States Air Force officers?

General RECKORD. Yes, sir.

Mr. COLE. And leave the word "Regular" out?

General RECKORD. That is right. But you remember yesterday, or Friday, I believe, you added the word "Regular" as you were going over these sections.

Mr. SHORT. It is superfluous if we understand the United States Air Force.

Mr. KILDAY. I think we ought to keep it uniform.

Mr. TOWE. So do I.

The CHAIRMAN. All right, (c).

Mr. BLANDFORD (reading):

(c) There is hereby authorized for the Air National Guard of the United States a personnel strength to be distributed among the several States, Territories, Puerto Rico, and the District of Columbia, of ——— officers, warrant officers, and enlisted persons, including those serving on active duty in the Air Force of the United States who are not counted within the personnel strength of 502,000 authorized in subsection (a) of this section.

General RECKORD. Mr. Chairman, may I point there to the fact that we have left the number blank?

The CHAIRMAN. That is right.

General RECKORD. We have in the guard today 27 groups. We have a certain strength. We expect, if Congress appropriates the money, to go a little higher. But our thought is—and we advance it for the consideration of the committee—that in this section which applies to the guard, and in the following section which applies to the Reserve, you make that authorization as you are doing for the Army and the

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Regular Air Force a little higher so that in case of emergency we can move up in our strength without coming back——

The CHAIRMAN. All right.

General RECKORD. To the Congress, and that you treat the Reserve and the Guard equally in this bill.

The CHAIRMAN. All right.

Now, don't we put in here something about groups?

General RECKORD. If that is the will of the committee, that is all right.

The CHAIRMAN. Why don't you put it in this way: Twenty-seven groups, and then put the officers, warrant officers, and——

General RECKORD. Mr. Chairman, may I indicate why we think that is not a good thing to do.

Let me take the chairman's own State. Suppose we would find there is another city in the State of Georgia that desires a squadron, or two squadrons. A group doesn't mean anything. A group may have two squadrons in it, or four. We think it would be much better if you gave us an over-all ceiling beyond which we could not go. There might be 27 groups. There might be 30, if the Air Corps decided that it was good business to have 30, and Congress approved.

The CHAIRMAN. Well——

General RECKORD. But groups, wings, and divisions have no definite strength.

Mr. KILDAY. Mr. Chairman, the General has been advocating bringing the Air Force provision in line with the Army provision.

General RECKORD. Yes, sir.

Mr. KILDAY. And we did exactly that in the Army. We fixed personnel ceilings and organizations.

General RECKORD. You took the specific statement as to units and organizations out of the Army bill——

Mr. KILDAY. No.

General RECKORD. Didn't you?

The CHAIRMAN. Oh, yes, we took the regiments and the divisions and all that out of the Army bill.

General RECKORD. You took it out of the Army side and gave them an over-all strength. Our own opinion, Mr. Chairman, is that it ought to be figured on perhaps 35 for the Guard and 35 for the Air.

The CHAIRMAN. You mean groups?

General RECKORD. The strength that would give us that many groups.

The CHAIRMAN. That is right.

Then, why wouldn't we be on safe ground—that would probably take care of all of the requests from the 33 members, if you put there 35 groups——

General RECKORD. Mr. Chairman, we weren't figuring it on that basis.

The CHAIRMAN. We would all be on safe ground.

General RECKORD. But, seriously, Mr. Chairman, there should be a ceiling beyond which we cannot go.

The CHAIRMAN. That is right.

General RECKORD. But will give us a little bit of cushion.

The CHAIRMAN. Well, the committee will decide what the ceiling should be.

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General RECKORD. Well, I suggest the round figure of 100,000 for the Guard and 100,000 for the Reserve, beyond which we could not go.

The CHAIRMAN. And you wouldn't have to come back here.

General RECKORD. No, sir.

The CHAIRMAN. That is the benefit of that.

General RECKORD. Pardon?

The CHAIRMAN. That is the benefit of putting it at 100,000.

General RECKORD. We think so; yes, sir.

The CHAIRMAN. Then, if we wrote in the bill a ceiling of not more than 35 groups, and not more than 100,000 officers and enlisted personnel——

General RECKORD. Yes, sir.

The CHAIRMAN. That would be laying down a program which would not have to be reconsidered and studied by the Congress in case of national emergency.

General RECKORD. Yes, sir. Now, please understand I am not trying to write the Reserve section. General Evans is here. I am trying to get in the record that we think both components should be treated alike.

The CHAIRMAN. Yes, sir. I am trying to fix it so if any States want to expand they can do so, if Congress makes the money available.

General RECKORD. Yes, sir.

Mr. COLE. Mr. Chairman, let me inquire what ratio this figure of 100,000 which you recommend bears to the 500,000 of the Air Force active-duty strength—how that compares with the ratio between the Regular Army strength and the National Guard authorized strength?

Mr. RECKORD. Mr. Cole, I don't believe I am qualified to answer it; but, if you wish, we will try to give you that information.

I just picked that number out of the air. It could be a little bit less, if you wish. We are not expecting or anticipating reaching that number. We expect a National Air Guard of 58,000 by 1950.

Mr. COLE. What is it now?

General RECKORD. Thirty-six some hundred.

The CHAIRMAN. Well, members of the committee, tentatively, if there is no objection, let us agree in our minds—of course, it is all subject to reconsideration after we hear from the Department—not exceeding 35 groups and 100,000 men. I think we will be on safe ground to reach a figure along that line.

The staff please bear that in mind.

All right, now, take your section (d).

Mr. BLANDFORD (reading):

(d) There is hereby authorized for the Air Force——

The CHAIRMAN. Wait. This is for the Reserve?

General RECKORD. Yes, sir.

The CHAIRMAN. You finished as far as the Guard is concerned?

General RECKORD. Yes, sir; we finished. And we want to thank you, Mr. Chairman, and gentlemen of the committee, for your consideration.

The CHAIRMAN. I want to thank you, General, for the aid and assistance your organization has rendered in reaching a proper decision.

General RECKORD. Thank you, Mr. Chairman.

The CHAIRMAN. And I want to compliment you and your organization on the magnificent National Air Guard that you have estab-

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lished. I want those figures used in the debate, to show what has been accomplished by the Air National Guard.

I was much gratified to hear the testimony that a large number of these planes that participated in the inauguration were Air National Guard. I didn't know it. I thought all that was the very cream of the Regulars. I thought, when all of them were flying by, that that was a very top aces in the service. But I am glad to know they came from 25 States and made such a wonderful showing.

General RECKORD. Thank you, Mr. Chairman.

The CHAIRMAN. You are to be congratulated.

General RECKORD. We have some charts here. Will they be needed?

The CHAIRMAN. We are finished with the Guard, now.

We will go to General Evans, and the Reserve.

General RECKORD. Again I want to thank the chairman and the members of the committee.

The CHAIRMAN. Now, we might want those charts in the debate on the floor. Just leave those charts with the committee.

Now, General Evans, the committee will be pleased to hear from you as representing the Reserve. We will be glad for you to make any statement you desire.

Is your statement prepared?

General EVANS. Yes, sir.

If I may introduce myself, I am Brigadier General E. A. Evans, O. R. C., executive director of the Reserve Officers Association of the United States.

STATEMENT BY BRIG. GEN. E. A. EVANS, O. R. C., EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION OF UNITED STATES

General EVANS. The Reserve Officers Association is a voluntary organization composed of Reserve officers of the three services, Army, Navy, and Air Force.

The object of our association, as stated in our national constitution, is as follows:

> The object of the association shall be to support a military policy for the United States that will provide adequate national security and to assist in the development and execution theerof.

Through the courtesy of the chairman and the members of this committee, I appear here today for the purpose of giving the views of our association on the subject of H. R. 1437, now under consideration by this committee, and to comment further on the subject of the Organized Reserve Corps in the Army and Air Force.

The Reserve Officers Association has no comments on title I of this bill as it has been amended. This title gives to the Organized Reserve Corps of the Army an over-all strength of 980,000 officers, warrant officers, and enlisted men. This strength is greater than that which we have now or could be attained except by the wholehearted cooperation of the Regular Army. Section 102 (d) provides warrant officers in the Reserve, which is something that has been needed for some time.

Title II of the bill has to do with the Air Force of the United States and the United States Air Force. I listened with interest to the presentation made by the National Guard yesterday and today. We

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agree that the use of the words "United States Air Force" and "Air Force of the United States," as used in sections 201 and 202, do not convey the apparent intent contained in those paragraphs, and we furthermore agree that, for the sake of clarification and proper understanding, this section should be redrafted. Inasmuch as title I has created warrant officers for the Reserves, it seems only logical that title II likewise should provide for Reserve Air Force warrant officers, and we so recommend.

In reference to title III, we are disturbed about section 301 and strongly recommend that this entire section be deleted from the bill. It seems to us that the title of this section should have been "Blank Check" rather than "Saving Provision," because if written into law the Congress of the United States, in effect, would be saying to one portion of the executive branch of our Government, "If you don't like what we have written in this law, then change it to suit yourself." We can find no good reason, nor excuse, why such a provision as outlined in section 301 is necessary, and, furthermore, consider it a most dangerous, as well as a most unusual precedent.

We are forced to take issue with our good friends of the National Guard as to the advisability of awaiting the outcome of the Secretary of Army's committee, headed up by Mr. Byrnes, and the Secretary of Air's committee, headed up by General Quesada. Such committees many times become involved in lengthy discussions. Furthermore, they are advisory only to the respective Secretaries; and, quite frankly, if the chairman and members of the House Armed Services Committee feel the necessity of reviewing the Reserve and National Guard situation in detail, we of the Reserves most sincerely urge that such review and study be made by a subcommittee of this, the House Armed Services Committee, as suggested by the chairman during yesterday's session. Such a subcommittee, looking into the situation which prevails in the civilian components, should be most salutary in effect and should provide this committee with information upon which not only to draft the necessary legislation but also to provide the committee with valuable information to guide its operations in connection with other much-needed legislation affecting both the National Guard and the Organized Reserve Corps. The Reserve Officers Association indeed would welcome an opportunity to appear before such subcommittee, for we feel that it is to you gentlemen that we must look for an adequate and proper Reserve program and for national security for our country.

The chairman, at the last session of this committee, indicated that he would like to have an outline of the situation which exists presently in the Army and Air Force Reserve. To outline these Reserve programs, it is necessary for me to give you a little background on the Reserve planning which has taken place since 1944, as well as to give you certain figures in connection with the intake of officers and enlisted men into the Army and Air Force Reserves following World War II.

Section 5 of the National Defense Act created a general staff committee, made up of an equal number of Regular Army, National Guard, and Reserve officers, charged with the function of making recommendations on policies affecting the National Guard and the Reserve. During the war years of World War II, the section 5 committee was eliminated under the War Powers Act, but in the fall of 1944 it was recreated. The committee was charged with the function of

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preparing plans for the postwar civilian components. I was one of the Reserve members of that committee. The plans for the postwar National Guard and the Organized Reserves as finally outlined by this committee were approved by General Marshall, as Chief of Staff, and Secretary of War Stimson. The thoughts in the minds of the committee members, in particular regard to the Organized Reserve Corps itself, were influenced by the fact that twice in our lifetime, this country has been a major participant in a World War. Both times we were woefully unprepared. It was felt that the very life of this Nation might depend on the adequacy of our civilian components, the National Guard and the Organized Reserve Corps. We all knew that sooner or later the size of the Regular forces might be reduced in size far below a safety point.

With these thoughts in mind, we had discarded the idea of the Organized Reserve Corps, having an officer corps only which existed between the two World Wars. Units in the Reserve were conceived of three different types, one, those which were to be fully organized with a full strength of officers and enlisted men, adequately equipped and trained and ready for service; these units to be comparable to National Guard units. A second type was to be partially organized, having a full complement of officers and a cadre of enlisted men and with partial equipment. The third type of unit was to be composed of officers only. All were to be adequately trained.

The entire Reserve program therefore was just as simple as that. All that remained to be done was to obtain the officers and the enlisted men, organize them into units, give them equipment and facilities, and the program would be on its way.

The officers and the men for the Organized Reserve Corps were obtained at the separation centers. In the Army, 285,000 officers and 460,000 enlisted men joined the Army Reserve and in the Air Force, 233,000 officers and 187,000 men joined the Air Force Reserve. The officers, in accordance with the provisions in the National Defense Act, were commissioned for a 5-year period and the enlisted men were enlisted for 3 years. No more wonderful opportunity possibly could have been given to any general staff. There were over a million officers and men who had joined the Organized Reserve of this country who felt that it was essential for the security of this Nation that we have an adequate Reserve Corps. The officers were there, the enlisted men in existence, but all of a sudden things started to happen, or more aptly stated, I should say, failed to happen. Units were not organized, and I shall certainly not take the time of this committee at this time to go into all of the details of why units were not organized. But the fact remains that they were not. One year, and 2 years, and 3 years went by and still units were not organized. The inevitable result took place. Officers who had expected to be assigned to organized units became disgusted and lost interest. As far as the men are concerned, their enlistments started running out last year. Having heard nothing, not having been assigned to any unit at the time when their interest was high, few have reenlisted, as you can imagine. The results, as far as the enlisted men are concerned, are obviously worse than that of the officers. It is indeed a sad commentary on the hopes of those of us who conceived the postwar Reserve program. It has been a source of keen disappointment that

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we have not been able to achieve that which we still feel is of vital necessity for the eventual security of this Nation, and that is an adequate Reserve program. The opportunity was there. It was handed to the General Staff but they failed to grasp an opportunity which may never again be presented to this Nation.

One explanation or excuse often given for the delay or ineffectiveness of the reserve program is "lack of funds."

Mr. SHORT. We had plenty of material, General.

General EVANS. I would like to comment on that later, Mr. Short.

Let us examine the situation to determine whether "lack of funds" is a cause or an effect. In that connection, may I quote from Report No. 2135 Eightieth Congress, second session, "National Military Establishment, military functions appropriation bill, 1949, page 16.

ORGANIZED RESERVES.—The total budget request for this activity is $125,000,000, from which the committee recommends a reduction of $25,000,000. The committee was not impressed with the presentation of the needs for the funds requested or with the manner in which this program is apparently being conducted. Too many men are encouraged to enlist in the Reserves and then hearing nothing further from such enlistment. The committee was informed that a total of 518,069 officers and 644,590 enlisted men had joined the Reserve ranks and are willing to devote their time and energy toward developing a balanced national defense force, but of these numbers only a small number of units have been given assignments; they are as follows:

(a) Organized units:

Ground Force units: Officers, as of March 22, 1948, 49,524; enlisted, as of March 22, 1948, 34,731;

Air Force units: Officers, as of December 31, 1947, 16,439; enlisted, as of December 31, 1947, 2,137.

(b) Composite units:

Ground Force units: Officers, as of March 22, 1948, 167,059; enlisted, as of March 22, 1948, 90,717.

Air Force units: Officers, as of December 31, 1947, 1,524; enlisted, as of December 31, 1947, 299.

Mr. COLE. Mr. Chairman, may I inquire what is the difference between organized and composite units?

General EVANS. I have in mind discussing that a little later, if I may, Mr. Cole.

I am still quoting:

The committee is in deep sympathy with the purposes of the Organized Reserves and sincerely trusts that during the coming fiscal year and with the expenditure of the funds here recommended and made available, it will be possible for this organization to provide some organized activity and training for the men who are willing to devote their time and energy to national defense activities. The Congress, through the enactment of Public Law 460, has attempted to encourage this activity through granting inactive-duty pay to officers and men who are members and active in this organization.

The situation became so intolerable that it became necessary for the President of the United States, on October 15, 1948, to issue an Executive order to the Secretary of Defense, which stated in part as follows:

The Secretary of Defense, and the head of each Department in the National Military Establishment, shall proceed without delay utilizing every practicable resource of the Regular components of the Armed Forces, to organize all Reserve component units, and to train such additional individuals now or hereafter members of the active Reserve, as may be required for the national security; and to establish vigorous and progressive programs of appropriate instruction and training for all elements of the Reserve components, including the National Guard.

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For the President of the United States to be placed in the position where it was necessary for him to issue such an Executive order was bad enough, but for the Departments of the Army and Air Force to attempt at this late date to pick up the programs and make something of them was, and is, indeed a colossal task. In the letter to the Secretary of Defense accompanying the Executive order, the President suggested that assignment of an active, capable high-ranking officer to head the Reserve program in both the Departments of the Army and Air. These assignments have been made, Lieut. Gen. E. R. Quesada has been placed in charge of the program for the Air and Maj. Gen. Charles W. Ryder has been placed in charge on the Army side. I have talked with both of these gentlemen and find that they are realizing what a terrific task has been placed upon their shoulders. They came into the matter cold, knowing nothing of the program, practically nothing about the Reserves. Perhaps this is good, because neither of them can have any preconceived ideas of what is or has been the difficulty but are able to see the program as it now exists and can work forward to one objective, and that is to carry out the provisions of the President's Executive order in seeing that units are effectually organized, equipped, and trained.

I find both of these gentlemen earnest, sincere, and capable, and I have no doubt but that they will bend every possible effort in an attempt to bring order out of chaos.

We were very much interested in a question asked the other day by Mr. Anderson of California. The question was asked of General Bradley and was to the effect "What is the reason for the present inadequacy of the Army Reserve?" General Bradley's answer generally covered five points:

1. Lack of funds.
2. Difficulty in obtaining sufficient instructors;
3. Lack of training facilities;
4. Lack of equipment;
5. Situations where officers of all grades and stages of experience were grouped together for training and where they were so grouped instruction was very difficult.

We agree with all of these points but there might well have been added a sixth point, which to members of the Army Reserve—and I might say parenthetically also to the Air Force Reserve—is of far more importance and probably hits at the root of the past and present condition more directly than any of the points enumerated by General Bradley. The point to which I refer is the necessity of bringing about the completion of properly organized Reserve units.

For over 3 years we have been stressing the necessity of organizing adequate, practical, and sensible units of the Army Reserve. It is a well-known fact and comes from 20 years' experience with the Organized Reserve Corps of the Army, that the civilian officer must have a military home if he is to maintain and retain his interest in the Reserves. His military home, the unit to which he is assigned, must be one that is based wherever possible on a table of organization. The officer must be made to feel that he is a part of a unit that is of some value to the security program. This is a very simple basic starting solution to this entire problem, but perhaps this is the reason why it has been so difficult to put over—it sounded too easy. This is the one

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thing that we have been quarreling about for all this period of time—ever since the close of the fighting war. Once an officer is in such a unit and a commanding officer has been assigned, unit morale can and is created, a training program is possible, and, furthermore, is created by the Reserve officers themselves.

In talking about the inadequacies of the Reserve in the past few years, it is our opinion that the principal reason for the failure to have a good Army Reserve at the present time—and I can say parenthetically it applies equally as well to the Air Force—is because officers and men have not been given mobilization assignments and because they have not been assigned to practical Reserve units.

I would like to leave the past. Let us look at the future. The Department of the Army took a step last November to decentralize to the armies the creation of training units. In fact, they said that all of the composite groups which had existed in the past would be eliminated and that the commanding generals of the various armies could and would create Reserve training units of any number in any place and of any size up to corps headquarters. This directive is a move in the right direction. I am very happy to see that the program is now on its way. We are assuming, of course, that the creation of training units is only a prelude to the eventual creation of units, as originally recommended by the section 5 committee.

I am of course referring to table of organization units.

In the case of the Air Force Reserve program, I regret to state that the same impetus has not been placed on a start of a program as is the case with the Army. The Army has slowly started to move, but unfortunately I cannot say this of the Air. I do know that under the capable guidance of General Quesada, a program for the Air Force Reserves is being planned. From what I have been able to learn of the program, it appears to be good as far as it goes. This program affects only about 60-odd thousand officers and a relatively small proportion of enlisted men. We are assured by General Quesada's office that the plans for the Volunteer Reserves—may I interject here; I am referring now to the difference between the 60-odd thousand that would be in the Organized Reserve and the balance of 234,000, which is their total strength, so that somewhere around 180,000, we will say, would be in the Volunteer Reserve, and referring to that Volunteer Reserve—are being considered at the present time and it will not be too long until these plans are ready for distribution.

We previously understood that the plans for this Volunteer Air Reserve group were such that these Reserve officers would be given no opportunity for promotion, for credits that would allow them to remain in the service, nor would they be given the opportunity to gain credits for qualifying them under Public Law 810, the Reserve retirement law. I am now informed that this has been changed and that an opportunity will be given to the Volunteer Air Reserve not only for promotion, but for retention and qualifications for retirement. This is good because otherwise we would have lost forever this large number of Air Reservists who served in World War II and who could not have been assigned to the Air Force Organized Reserve because of limitations of numbers.

Quite frankly, I hesitate to comment too forcibly upon the present situation in the field. The President of the United States is deter-

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mined to see that an adequate Reserve program is created, and I have every faith in the interest of General Quesada and General Ryder in trying to see that the President's wishes are carried out. I would not wish to say anything about the present plans for the Reserve program which would embarrass them or hold them back from bringing about a speedy accomplishment of their mission. Quite to the contrary, they will find the Reserve officers association their strongest booster, until such time as we can see a repetition of past failures again facing us.

We are in this security program all together—the Reserves, the National Guard, and the Regular services. We would like to feel we could all work together amicably and to the same end, but unfortunately we oftentimes are in the position of realizing that in the Regular service there are individuals, and sometimes in high places, who are not entirely sold on the idea that the Organized Reserve Corps should be anything else than, to quote Representative Bob Sikes of Florida, "cannon fodder and filler replacements." If we felt that by just being "cannon fodder" and that by just being "filler replacements" this would accomplish the end which we seek, namely, adequate national security, then I feel sure that we would gladly keep to the background and let this course of thinking prevail. The fact remains, however, that we honestly and sincerely do not believe that is the best way in which we can serve our country. True, our vocation is first, our way of life, as a civilian; but our avocation, because we feel it is essential to the security of the country, is that of a military man.

Mr. Chairman, and gentlemen of the committee, I cannot tell you how strongly we rely upon the Armed Services Committee for help and guidance in our attempt to bring about a proper and adequate Organized Reserve Corps program for the Army and Air Forces so that we in turn can be assured of an adequate national security for this Nation.

The CHAIRMAN. Thank you.

Mr. Short, any questions to the General on this general subject?

Mr. SHORT. I think he has given us a very clear and very forceful statement. It is most regretable, almost tragic, that we have already lost many of our best Reserve officers and enlisted men. I hope we are not too late to correct failures and abuses of the past.

General EVANS. I hope so.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. General, specifically with reference to title II of the bill, has your association recommended, with the suggested changes that the chairman has stated we would bear in mind as to over-all policy, leaving the wording for a later time?

General EVANS. I think generally so, Mr. Kilday.

Of course, I would like to see the way that title II is drafted before I comment on the thing.

Mr. KILDAY. I understand. But I mean such things as the divisions of 35 groups to the Air Guard, 35 to the Air Reserve, and 100,000 men to each; would that meet with your approval?

General EVANS. We have always held to the principle that there should be parity wherever possible between the National Guard and the Reserve.

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Mr. SHORT. So you would agree to the subsection (d) under section 202, and section 203: The authorized aircraft strength, on page 2 of the suggested amendments?

General EVANS. That is approximately 100,000?

Mr. SHORT. Yes.

General EVANS. I have no objection to that.

It comes somewhat as a shock, quite frankly, to realize that the National Guard is asking for an increase in their strength. I hadn't anticipated that. We are somewhat in the position of being beggars and cannot be choosers on this thing. We haven't much of an Air Reserve program now.

Mr. KILDAY. Of course——

General EVANS. The only thing that disturbs me about the 100,000, quite frankly, is this: We have in the Air Reserve today a very good sizable force, and I am hoping that we can recover the interest of those men. If it is limited to 100,000 I am fearful that we will be forced to throw them out. That is my first reaction to this thing.

Mr. TOWE. How many do you have now that you think would participate, General?

General EVANS. I can't answer that question. I wish I could, Mr. Towe.

We have on paper some 234,000 officers and 187,000 men. This is a sizable force. Now, what percentage can be brought back into being I don't know.

I might say, incidentally, that the passage of Public Law 810, which you gentlemen very kindly reported on favorably last year, is having its effect most definitely on the Reserves. It is having the effect of making Reserve officers and enlisted men become interested in this Reserve program.

Mr. TOWE. They have nothing to be interested in at this point, do they?

General EVANS. That is the trouble. They are interested and want to do something, but they are being forced up against a blank wall.

Mr. SHORT. Your organization is merely on paper?

General EVANS. That is right.

Mr. KILDAY. Now, under those figures, a ceiling of 100,000 would automatically cut the potential—the pool—by about 250,000?

General EVANS. Yes; it would. Now, what the actual cut would be I have no way of knowing because I don't know how many of that have lost interest completely and can never be recovered. That is the only thing I am fearful of in connection with a ceiling of that sort. We actually have a potential right now which is greater than 100,000.

Mr. KILDAY. We are going to have to look that over and see what figures General McConnell has.

General EVANS. That is right.

And don't forget, Mr. Kilday, these gentlemen—these officers and these men—are all combat trained. They are not people that have just recently graduated from school. They are people who have had actual experience—and war experience—and to throw them aside and waste them in being seems criminal to me.

Mr. KILDAY. One other matter, General, as to the definition of the Air Force of the United States. You agree in substance with what we have been speaking of here.

General EVANS. Yes; I do.

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Mr. KILDAY. You parallel it with the Army of the United States.

General EVANS. I do; indeed.

Mr. KILDAY. That is all.

The CHAIRMAN. Mr. Cole.

Mr. COLE. Will you tell us the difference between the composite unit and the organized unit?

General EVANS. Yes. The composite group was a makeshift. Because it would seem to be impossible for the Department of the Army and the Department of the Air Force to get units organized under a T. O. basis they created the composite group, which was an easy way out. It was a matter of taking any community and saying that any group of officers, whether they were Judge Advocate or Adjutant General or infantry or cavalry or quartermaster, or anything else, would be assigned to a composite group. Now, this group was given a commanding officer. Of course, it had no table of organization. You can't imagine a heterogeneous group of officers being put into any organization of that type. But it was a pool. It was simply a method of organizing in some manner, in a pool.

Now, that was the thing General Bradley was referring to in his fifth statement as one of the reasons why the Reserves had not advanced. He said that because they had officers who, some of them, had had front-line combat service and some were colonels and second lieutenants, and being from different branches of service, it was difficult to train them. Of course it was. It was impossible to train them.

We yelled and screamed to high heaven about these composite groups. We passed resolutions in our national convention demanding that they be done away with. We had to use rather strong terms, and I therefore say "demanding" advisedly. But as a result of our protesting they are changing it, and in their place have come training units. They haven't been entirely done away with. You can't do away with them entirely. I know that. I know there are certain localities where it is impossible, and always has been impossible, to have table of organization units, or perhaps even training units. But we certainly must keep them at a minimum because it is the lowest form of animal life, as far as the Reserve program is concerned, in my opinion, and that is the composite group.

Mr. COLE. When you use the expression "Organized Reserve Corps," the word "Organized" is capitalized. Does that have any peculiar meaning or significance that makes it in contrast to the expression "organized reserve corps," with the small letter "o"?

General EVANS. Well, I rather imagine so, Mr. Cole, certainly if we can go back to a statement of General Marshall. General Marshall came out with a very fine piece of work in 1944. Our good friend General Palmer, sitting back of me a short time ago, had a great deal to do, I am sure, with that particular circular. It was probably the first time in the history of this Nation that we had such a clear, concise statement of policy as far as the Military Establishment was concerned as it affected the Regulars and the civilian components or the Reserve components.

Mr. COLE. General, the expression "Organized Reserve Corps," with a capital "O," does not indicate a particular type of Reserve organization, does it?

General EVANS. No. I beg your pardon.

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Mr. COLE. That is all I have in mind.

General EVANS. No; it does not. I was referring to the over-all set-up of the Reserve itself.

The CHAIRMAN. Any further questions, Mr. Cole?

Mr. COLE. Yes; there are a couple more.

General Evans, it seems to me in determining the size of the Reserve, outside of the cost factor, there are two things that we can do: First, be guided by what our Reserve strength should be to give us reasonably adequate national security, or we can have a reserve force of every citizen in the country that is interested and wants to participate. Now, which should it be?

General EVANS. I think the latter. Our concept of the Reserve——

Mr. COLE. Just the latter. You don't want to recommend a ceiling of 100,000?

General EVANS. No; not certainly as far as the air is concerned.

Mr. COLE. Or either one.

General EVANS. Well, for practical reasons I can't quarrel with the nine-hundred-odd-thousand for the Army because it is so far above anything that we have at the present time that we will probably never even approach it.

Maybe it is a mistake to limit the Reserve in that sense. Our concept of the Reserve itself has been that there was no reason other than budgetary limitations why you had to limit. Let us have it as large as we possibly can have it. We had an excellent opportunity, with 1,200,000 bodies, to create that many—that is, right after the war.

Certainly, going back to the thinking in the section 5 committee, there was no top limit that was ever thought of, as far as the Reserves were concerned. It was what you could have. It is what you could create.

Mr. COLE. What you could afford.

General EVANS. Yes; and what you could afford.

You could build up your ROTC. You would get a certain number of youngsters into the Reserve. Whatever that amounted to would eventually mean the size of your Reserve.

Mr. COLE. Then, your recommendation is based on what the country could afford, so far as the size of our Reserve, and not what the country needs for national security?

General EVANS. Yes. Of course it has a definite bearing. You have to keep in mind that your country may need the Reserve or will not need the Reserve.

Now, if you go on the hypothesis that it does not need a Reserve—and certainly that is our feeling about the matter—then we ought to do everything we can to get that Reserve as large as possible because when all is said and done that is the cheapest form of security that you can possibly obtain.

Mr. COLE. Just one other question, Mr. Chairman.

General, is there any statutory limitation on the authority of the President in his determination of what units he shall call into active service in case of emergency?

General EVANS. No.

Mr. COLE. Is he required to call the National Guard first and then the Reserve, or Reserve first and then the National Guard? Or are his hands free, as Commander in Chief, to call anybody he wants to?

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General EVANS. I don't know that answer, quite frankly. Maybe General Reckord can answer it.

The CHAIRMAN. Under the law——

General RECKORD. The National Defense Act, Mr. Cole, in section 111, provides that when Congress shall declare an emergency and authorize the President, he may order any and all units and organizations and individuals of the National Guard into the active service.

There is a provision in the Draft Act which says that the National Guard shall be used first, next after the Regular Establishment.

The CHAIRMAN. That is right.

General RECKORD. We agreed with our friends of the Reserve, in the present Draft Act, to modify that statement of policy to include those A units of the Reserve necessary to the support of the Regular Army and the National Guard. They are all supposed to go in on a par.

Mr. COLE. Does that mean you are going to suggest new legislation to put that in as policy?

General RECKORD. No, sir. It is in the policy.

Mr. COLE. And it is not going to expire with the termination of the draft law?

General RECKORD. That section would expire with the present law. But that is the law at the present time.

Mr. SHORT. Don't you think it would be wise to make it permanent?

General RECKORD. I do; yes, Mr. Short.

The CHAIRMAN. But, as a matter of fact, it is always understood in case of national emergency, after the Regulars have been called, the next thing to be called is the National Guard.

General RECKORD. That has been our position for years.

The CHAIRMAN. Exactly. And for that very reason the Air Force has concentrated on building up a stronger Air National Guard than a Reserve, because it is always understood that the first civilian component to come in is always the National Guard.

General RECKORD. Mr. Chairman, while I am on my feet may I correct one thought which my suggestion of 100,000 strength for the National Guard gave General Evans. We are not asking for any increase in the National Guard. We will be satisfied with that overall ceiling named by the committee, at 100,000. We would rather see it there, so we wouldn't have to come back.

The CHAIRMAN. That is right.

General RECKORD. You can make it 75,000 and you can make the Reserve 250,000. We will be satisfied.

The CHAIRMAN. Give them as many as those who have indicated their desire to become a member of the Reserve.

General RECKORD. Yes, sir.

The CHAIRMAN. Any further questions, Mr. Cole?

Mr. COLE. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Durham, of North Carolina.

Mr. DURHAM. General Evans, you seem to be pretty well satisfied with the program since the President issued his Executive order. Now, on what basis was the budget fixed for the Reserve section this year?

General EVANS. I can only state in rather general terms, because, of course, I do not know the interworkings over at the Pentagon in reference to the budget figure.

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Mr. DURHAM. Were you called in?

General EVANS. No, no.

Mr. DURHAM. For your recommendation or any suggestions?

General EVANS. No; we were not called in on that.

Mr. DURHAM. You weren't consulted at all?

General EVANS. No; not at all.

Mr. DURHAM. What was the final figure recommended in the budget this year?

General EVANS. There are two figures; one for Army and one for Air. If I recall correctly, the Army figure is $125,000,000, and I think the Air figure is close to $80,000,000.

Mr. KILDAY. $115,000,000 was the estimate yesterday?

General EVANS. $115,000,000 for the Army.

Mr. KILDAY. That is what General Cramer testified for the Army yesterday.

General RECKORD. No. That was the figure for the Air National Guard.

Mr. KILDAY. That is what I mean.

General EVANS. I think the Air Reserve is something like $80,000,000.

Mr. DURHAM. That is for your Reserve section?

General EVANS. That is right.

Mr. DURHAM. You could use that much, provided it is all given to you?

General EVANS. Oh, yes. We can use anything that can be given to us, because we are woefully in need of everything.

Mr. DURHAM. That is all, Mr. Chairman.

Mr. JOHNSON. Mr. Chairman.

The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. Is there anything in the Reserve organization that compares with the National Guard Bureau?

General EVANS. Well, yes, Mr. Johnson. It is not the same, but it does compare. It is the closest thing that we have. The National Guard has a Bureau. In the Reserve——

Mr. JOHNSON. That is authorized by law?

General EVANS. That is authorized in the National Defense Act.

Mr. JOHNSON. Is there any statutory authorization for your activities?

General EVANS. No, there is not. There is no authority for the executive for Reserve and ROTC Affairs Office. That exists. It is headed up at the present time by a brigadier general of the Reserve, and he has a staff.

Mr. JOHNSON. Well——

General EVANS. But he is supposedly only advisory to the Chief of Staff. He has no operating functions whatsoever. It is not a bureau like the National Guard is.

Mr. JOHNSON. He doesn't hold office for a term, like the head man in the National Guard Bureau, does he?

General EVANS. Well, I don't know exactly how the National Guard hold their office; but this officer at the present time is ordered to active duty, and he can be relieved at any time by the Chief of Staff.

Mr. JOHNSON. Well, would it be of any advantage to have statutory authorization set up for the Reserve features of the defense system?

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General EVANS. I think it is very esesntial that that be done.

Mr. JOHNSON. Well, for instance, is that man here today to give us some figures and data, like we had before from the National Guard officer?

General EVANS. No, General Westover is not here.

Mr. JOHNSON. Well, did he know about the meeting here?

General EVANS. I can't answer that question. Normally, he is not called upon to testify before your committee, and quite regretfully so. I think General Westover has information that is of vital interest to people.

The CHAIRMAN. We will call him up before we are through with the bill. Who is he? General——

General EVANS. General Westover—W-e-s-t-o-v-e-r.

The CHAIRMAN (addressing staff). Invite him here tomorrow morning.

Mr. JOHNSON. Tell us a little bit about his specific duties. You must know something about them.

General EVANS. Yes, I do, Mr. Johnson. He is a staff officer of the Chief of Staff. He is charged with being the principal adviser to the Chief of Staff on Reserve matters.

Mr. JOHNSON. Well, does he help prepare the budget?

General EVANS. That is only on the Army side.

Mr. JOHNSON. Yes. Does he prepare the budget, for instance?

General EVANS. He does not help prepare the budget. He is asked about the budget, and he is allowed to appear and either argue for or against items. But he has no hand in the actual preparation of the budget.

Mr. JOHNSON. Well, the National Guard officer prepares the budget and submits it.

General EVANS. They have much more to do with the preparation of the budget than is the case with us.

Mr. JOHNSON. We went through the same thing after the other war, didn't we?

General EVANS. Of course.

Mr. JOHNSON. I wish you would outline what you think ought to be done by the Congress to make this thing click.

Mr. TOWE. He suggested we ought to have a committee appointed and I agree with him.

General EVANS. No. 1, I think it is probably more proper to take up the details with that committee.

I might outline several things that might be of interest to the overall committee, however. We have gone through this thing now for 3 years and we have some pretty definite ideas. We are very much interested in the creation of a bureau for the Reserve, similar to the Bureau that exists for the National Guard. I think that is quite essential.

We have no guarantee that the executive for Reserve Affairs Office is going to continue more than today. It can be eliminated by administrative order tomorrow. There is no standing in law whatsoever.

No. 2, we feel very keenly that we need representation on a Secretary level. Several bills have already been introduced into this Congress, as I understand it, that would create an Assistant Secretary for Army, Navy, and Air, and those assistant secretaries charged with looking out for the Reserve components of that particular department.

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There are many administrative things that should be done.

Mr. JOHNSON. One other thing—if I am not taking too much time.

The CHAIRMAN. Take all the time you want.

Mr. JOHNSON. We passed this pay bill.

General EVANS. Yes.

Mr. JOHNSON. Which we thought would stimulate enlistments by the Reserves.

General EVANS. Yes.

Mr. JOHNSON. How has that worked out, to your personal knowledge?

General EVANS. Well, unfortunately this particular year.

I again go back to the fact that units were not organized. You cannot pay people just for being in the Reserves. They must be in a unit and they must obtain training. That is why you pay them.

Now, what was the result? The Department had a long, long time to prepare the regulations for this thing, but they did not do it. As a result there wasn't a single dollar paid out in the first quarter of this fiscal year, and very, very little money has been paid out in the second quarter of the year.

Mr. JOHNSON. Well, it was brought to my attention when I was out home this fall that some of these Reserve officers who are doing work on active duty—not active duty but doing part-time work—are not getting paid for all of the exercises that they are allowed to take during the year. Now, why is that?

General EVANS. I have no doubt but that that is correct. Mr. Johnson, because there was a limited sum that was appropriated for the Army and the Air. Now, anticipating that they would not have enough to go around to all of the units which they hoped to organize, it was allotted. And then there were categories set up.

There was category 1, which was the one to be paid, like the National Guard, for 48 drills.

Then there was category 2, that was not to receive 48 but 24 drills, paid drills.

And there was category 3, that were to receive a lesser number.

You finally got down to category 4, which only got paid once a quarter.

Now——

Mr. JOHNSON. In the law that we passed, I don't remember anything like that, or any language that would permit them to make categories like that.

General EVANS. No. That may be so, Mr. Johnson, but they had so much money that was appropriated, and it was not enough to take care of all of the units that they hoped to take care of.

Mr. JOHNSON. Isn't there somebody that knows what they are going to have, and how much money they will need next year?

General EVANS. That is correct.

Mr. JOHNSON. Was there just a lack of any cohesive group who is supposed to sponsor Reserve activities?

General EVANS. That is certainly one of the reasons.

But you will recall that I read from the statement of the Appropriations Committee, where they had actually reduced the amount of money from the amount of money requested. And why? Because there weren't units organized and they didn't see any reason to appropriate that amount of money until the units were organized.

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Now, the same thing applies to the matter of inactive duty training pay. We are faced with the situation very probably this year of not being able to expend more than approximately 50 percent of the amount that was appropriated and all because there were not units organized so that they could train and so that they could draw the pay.

Mr. JOHNSON. You think we ought to have a subcommittee to bore into this and find out and see if we can work that out?

General EVANS. It is essential that that be done, Mr. Johnson, yes.

The CHAIRMAN. General, you said something that intrigued me very much. You said there is no bureau or agency set up comparable to the National Guard agency in the Department.

General EVANS. That is correct.

The CHAIRMAN. And you think it would lend strength to fighting the battles of the Reserve both in Congress and in the Department if such a similar set-up was put in operation in the Department?

General EVANS. I do, indeed.

The CHAIRMAN. Mr. Price, any questions?

Mr. PRICE. Mr. Chairman, yes.

General, do you have any hope that these two special committees appointed by Secretary Royall and Secretary Symington might bring any answer to these questions?

General EVANS. No, Mr. Price. Those committees are only for the purpose of determining a relative troop basis of the National Guard and the Reserve. It has nothing to do with organizing units. It has nothing to do with training units. It has nothing to do with anything else.

Mr. PRICE. They are not going to go into these questions at all?

General EVANS. No.

The CHAIRMAN. Mr. Rivers.

Mr. RIVERS. General, I was noticing here your listing and cataloging the five points enunciated by General Bradley.

General EVANS. Yes, sir.

Mr. RIVERS. It looks to me as though he tosses it right back into the laps of Congress. They say the reason that these things never came about is because they didn't have the money, such as the lack of funds for training and instruction—which, of course, is money, lack of training facilities—which is money, and lack of equipment—which is money.

Now, I would like to know whether the President is at fault, or the Bureau of the Budget, which didn't permit you to have the officers and men, or whether Congress organically—at the beginning—is responsible? Would you care to enlighten us a little on that?

General EVANS. You will recall, Mr. Rivers, that I added a sixth point. I quoted General Bradley's five points and I added a sixth point, which was in our opinion the reason for the past failure of this whole Reserve program, and that was a failure to create organized units.

Now, it doesn't take much money to organize a unit. It takes money when you start getting facilities and when you start getting equipment, and when you start paying people to go to camp, and so forth, but it doesn't cost money to create a unit. That is only a matter of issuing an order that such and such unit will be created in such and such a spot, and assigning officers to that unit.

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Now, that is the start of this thing. You can't do anything about training. You have no need for facilities. You have no need for equipment. You haven't any need for money. You haven't any need for anything, until you first create organized units.

Mr. RIVERS. Well, would you say—would you hazard a guess—that they did not attach sufficient importance to the need for organizing this organization? In other words, they put other things ahead of it; would you say that?

General EVANS. That is a rather mild way of putting it, I would say.

Mr. RIVERS. Let me ask you this: Would you hazard a guess that somewhere along the line somebody thought they were going to federalize the National Guard and therefore they would wait and cross this bridge later on?

General EVANS. No; I don't know that that was the case. I have no way of knowing, of course.

Mr. RIVERS. Of course, they did think about that, you know.

General EVANS. It goes back further than that, Mr. Rivers.

I have heard, I think, that General Palmer paraphrased rather well two lines of thinking in the Regular service, what might be termed the Washingtonian line of thought and the Uptonian line of thought. The Uptonian theory might be very briefly paraphrased as follows: "Yes, we need civilians in time of war, we need them to fight battles, but they are no good anyway so we might just as well not do anything with them in time of peace; we will simply use them as filler replacements and put them in the Army." But the Washingtonian line of thought is quite different.

Mr. RIVERS. What is the origin of the Uptonian theory that you mentioned?

General EVANS. Upton was the man who wrote a book on military policy I think following the Civil War.

The Washington line of thought is quite different, and it is the one that we subscribe to. That is: "Yes, we have to use civilians to fight an all-out battle, an all-out war, but if we are going to use them let us do something about them in times of peace, and let us give them all the training we can."

Now, I am rather inclined to believe that too many times the Uptonian theory has been too high in the thoughts of many people in the Regular service.

Mr. SHORT. We might as well be frank and blunt about it. I think the reason you haven't had an organized reserve is because the Regular Establishment had very little interest and very little desire to create one. They didn't want it.

Mr. RIVERS. You think that that can be cured by a clear, concise, unequivocal, and definite program laid down by the Congress?

General EVANS. I certainly do, Mr. Rivers.

Mr. RIVERS. You think that is the only answer to it?

General EVANS. In my way of thinking, it is the only answer.

Mr. RIVERS. Thank you, sir. That is all I wanted to know.

Mr. VAN ZANDT. Mr. Chairman——

The CHAIRMAN. Then, if you had an agency set up like the National Guard Agency in the Department, that would be your first method to bring it about?

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General EVANS. Yes, with a Secretary over both. That is the first step in this thing.

I think eventually we are going to have to do in the Army and the Air what has been done in the Navy. We are going to have to have an over-all Army bill, as far as the Reserve program is concerned, and we are going to have an over-all Air bill.

The CHAIRMAN. Well, we are, during this session of Congress, going to try to put these two services in good shape, as far as legislation is concerned, as has been done for the last 15 or 16 years for the Navy.

General EVANS. I will say amen to that, Mr. Chairman.

The CHAIRMAN. Mr. Van Zandt, go ahead.

Mr. VAN ZANDT. Is it not true that you made a complaint along the same lines about a year ago that you are making today?

General EVANS. Mr. Van Zandt, I have been making this complaint for 3 years without stopping.

Mr. VAN ZANDT. And is it not true that members of this committee at that time, when questioning representatives of the Army, were informed to the effect that the Reserve organization could not be set up on a permanent basis because the Reserve officers were still moving around and had not yet established a permanent address?

General EVANS. That was one of the reasons: yes, sir.

Mr. VAN ZANDT. And is it not true that they came before this committee and asked for the passage of what is now Public Law 460?

General EVANS. That is correct.

Mr. VAN ZANDT. To provide drill pay.

General EVANS. That is right.

Mr. VAN ZANDT. Giving them the authority to organize units: Type A, type B, and type C?

General EVANS. That is true.

Mr. VAN ZANDT. And they assured us that we would have an organized reserve in the near future.

And is it not true that the Army has not taken advantage of the provisions of Public Law 460, by failing to set up type A, type B, and type C units to meet the requirements of our national defense?

General EVANS. Yes. They have started but it still hasn't been done in any degree.

Mr. VAN ZANDT. Now, the type A units that are in existence today—what type of equipment do they have?

General EVANS. Well, I am going to have to defer to my good friend, General Westover, to answer that question.

I can say that it is so small that it is rather ridiculous.

Mr. VAN ZANDT. And type B—do they have any equipment at all?

General EVANS. They can't get enough training equipment.

Mr. VAN ZANDT. And what is happening to type C?

General EVANS. Well, they have no equipment.

Mr. VAN ZANDT. That is a paper organization?

General EVANS. Well, it is not a paper organization—in one sense, yes, you might call it that. It is officers only.

Mr. VAN ZANDT. Now, did I understand you to say that the money is available to pay for drills, but they are not taking advantage of it?

General EVANS. They have not been able because regulations were not prepared in time to allow any pay to be made during the first quarter.

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The regulations are out now and the first pay I believe was made here the other day to a finance unit, which I think was pay for one meeting during, I think, the second quarter of the year.

Mr. VAN ZANDT. General, you represent the Reserve Officers Association of the United States?

General EVANS. That is correct.

Mr. VAN ZANDT. And you in your representation not alone represent the Army and the Air Force, but you also represent the Reserve officers of the Navy?

General EVANS. That is correct.

Mr. VAN ZANDT. Now, have these other component parts of our defense been able to set up an Organized Reserve Establishment, or Reserve Establishment, where the men attend drills and the volunteers also attend drills?

General EVANS. You are referring to the Navy?

Mr. VAN ZANDT. That is correct.

General EVANS. Yes.

I would be very happy if the Army program and the Air program was anywhere near the situation that exists in the Naval Reserve at the present time.

Mr. VAN ZANDT. Now, a moment ago the question was asked of you to explain just what was going on as far as the composite units are concerned.

General EVANS. Yes.

Mr. VAN ZANDT. Is it not true that the Navy has composite units, and that they are very well organized and functioning?

General EVANS. Yes. But you have quite a different situation in the Navy than you do in the Army, for instance. You do not have quite the cleavage of the branch of service that we are burdened with in the Army. You can take your technical people and group them together, for instance, into a composite group of the Navy, and they would all be interested in the same type of training. That is comparable to what we call a training unit. I don't think you have anything in the Navy that is quite the same as we have called the composite group in the Army.

Now, the Air has somewhat the same type of problem as the Navy. They can create composite groups or training groups, whichever you care to call them, because they have people that are interested in motors, for instance, and they can group a set of officers together in that group and they would all have a common interest in training.

Mr. VAN ZANDT. Well, the Navy has a composite group in which they train at least half a dozen different groups of individuals: Navigation, electronics, administration, and so forth. Then they have specialist units.

General EVANS. That is right.

Mr. VAN ZANDT. Why is it not possible for the Army to set up special units?

General EVANS. It would be possible, and they are doing that in the training units.

Mr. VAN ZANDT. Now, if the Navy has been successful in setting up these specialist units all over the country, and the officers and men are training on the voluntary basis, why is it that the Army has not set that up.

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General EVANS. I can't answer. It would take too long an answer to give you on that, Mr. Van Zandt.

The fact is that 3 years have gone by. And the Navy conceived it, and the Navy did it, but the Army and the Air Force did not conceive it, and neither did they do it.

Mr. VAN ZANDT. In other words, the responsibility for the failure there rests upon the shoulders of the Army.

General EVANS. Yes, sir.

The CHAIRMAN. And upon the shoulders of the Congress if the Congress doesn't do something about it.

Mr. VAN ZANDT. That is right.

The CHAIRMAN. And with the cooperation of the committee, I hope we will make a little program on that.

Mr. Gavin.

Mr. GAVIN. In your statement here on page 9 you say:

> We previously understood that plans for this Volunteer Air Reserve group were such that these Reserve officers would be given no opportunity for promotion, for credits that would allow them to remain in the service, nor would they be given the opportunity to gain credits for qualifying them under Public Law 810, the Reserve retirement law. I am now informed that this has been changed, and that an opportunity will be given to the Volunteer Air Reserve not only for promotion, but for retention and qualifications for retirement.

I wonder if you would discuss that with us, the comparative situation between the Regular Army and the Reserve, so far as retirement benefits? It have had some inquiries on that, and I would like to get your opinion on that. What are the changes that have been made?

General EVANS. We were very much disturbed some time ago and called into being our National Air Force Committee. It met out in Kansas City. This committee had many problems that they felt were vital, but they centered on one thing, and one thing alone, and wrote a report accordingly. That had to do with the so-called Volunteer Air Reserve.

It appeared at that time that we were faced with a plan or program of the Air Force that would take a limited number of a quarter of a million officers, for instance, and put them in the Organized Reserve where they would be in units, and where they would be given training, flying time, and all the rest, but that the difference between that relatively small group and the total number of officers that existed would go into the Volunteer Reserve. And at that time it was their understanding that the plans were not to give them opportunities for training—no put them into units. For instance, in not being in a unit, they could not attend a training assembly and consequently could gain no points that would help qualify them for Public Law 810.

In other words, if that were done and furthermore if they were not being allowed to be promoted, what interest would there be for the officer to remain? He would simply throw up his hands and say, "Well, it isn't worth while, I will quit and let somebody else carry on."

But I think it is probably through the good offices of General Quesada that that plan, which I understand had been originally conceived, was eliminated. And now I am assured—no later than yesterday or the day before, when I went over to General Quesada's office—that the present plan does contemplate that the Volunteer Air Reserve will be grouped into training units or composite units, that they will be allowed to be promoted on the same basis as those in the Organized Reserve——

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Mr. GAVIN. I am interested in the basis of retirement. That is what I want you to talk about.

General EVANS. Do you mean the provisions of Public Law 810?

Mr. GAVIN. Yes. How would they qualify—these men that are in the Reserve?

General EVANS. Reserve officers can qualify under Public Law 810 by several things. Basically, the law sets up that they must make 50 points a year. And it states that 1 day of active duty will count as a point. By attending an assembly they can gain a point, if it is 2-hour instruction. By doing extension courses, now the Army has put in a regulation that 3 hours' work will give you one point. By sitting on boards or by doing any kind of Reserve work that is considered military instruction, they get a point. And that helps build up this required number of points so they can be qualified.

It is a rather detailed construction. I would be very happy to come to your office and to give you the detail on it.

Mr. GAVIN. All right.

Mr. DURHAM. Mr. Chairman, just one word:

How long is that report that your committee made in Kansas City, or wherever it was that they met?

General EVANS. You mean in number of pages?

Mr. DURHAM. Yes.

General EVANS. Just two pages long.

Mr. DURHAM. Mr. Chairman, I would like for it to be put in the record.

The CHAIRMAN. Put it in the record.

General EVANS. Very good, I will have it put in the record.

The CHAIRMAN. Now, members of the committee, we will have to take a recess until tomorrow morning at 10 o'clock, when we will ask the General to return, and at which time Mr. Symington will be here.

But before we break up, I want to advise the committee that I have been notified by the Expenditures Committee that the amendment I submitted on behalf of the committee with reference to the reorganization bill—in regard to reorganization plans with reference to the National Defense, be not mixed up with other departmental reorganizations—has been tentatively agreed to. So in the reorganization bill, it has been tentatively agreed to adopt an amendment to the effect that whenever the National Defense is dealt with it will come in a separate package.

Now, Mr. Forrestal has requested that a bill be introduced to establish the Office of Undersecretary. It meets with the approval of officials for such a bill to be introduced. I am asking Mr. Short, on behalf of the committee, to introduce the bill and just as soon as we finish with this bill we will have that bill up before the committee, at which time I will ask Mr. Short to preside over the committee and to consider the bill for the establishment of the position of an Undersecretary.

Is that satisfactory to you, to introduce it?

Mr. SHORT. Yes.

Mr. VAN ZANDT. Undersecretary of what?

The CHAIRMAN. The Undersecretary of National Defense.

Now, we will take a recess until tomorrow morning.

(Whereupon, at 11:50 a. m., the committee adjourned.)

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HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Thursday, February 3, 1949.

The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. Let the committee come to order.

Before we commence the hearing on the bill under consideration, I will ask the clerk to read a letter that I received from Secretary Sullivan, and then pass the letter over to the press table. I hope the members of the press will be able to get all of the information out of the letter that it will be necessary for them to fix up their articles without coming to me, because this is all I know about it.

Mr. HARPER (reading):

THE SECRETARY OF THE NAVY,
Washington, February 2, 1949.

DEAR MR. CHAIRMAN. It has been the Navy's policy to inform the members of the appropriate committees of the Congress whenever substantial changes in operating plans or operating forces are in prospect. In this way it is believed that the members of these committees would be in a position to answer the many inquiries they will receive from their constituents.

In order to enter fiscal year 1950 with the operating forces and the supporting establishment which the Navy plans to maintain during that fiscal year, it is necessary to start at once to reduce our present forces. These reductions must be initiated at this time because insofar as practicable the changes contemplated must be accomplished prior to June 30, 1949. It is imperative that the costs of this reduction be defrayed with fiscal year 1949 funds and that the planned level of operation be reached at the beginning of the fiscal year so that it can be maintained constant throughout the year.

To reach the fiscal 1950 figures, it is necessary to make the following reduction in personnel:

Regular Navy:	
Present enlisted personnel strength	371,700
Average fiscal-year 1950 strength	350,000
Reduction	21,700
Regular Marine Corps:	
Present enlisted personnel strength	76,500
Average fiscal year 1950 strength	69,895
Reduction	6,605
Reduction in commissioned officers of the Navy and the Marine Corps	1,195
Total reductions	29,500

In order to achieve the most efficient and economical transition to the fiscal year 1950 position, and to reduce diversion from the operating forces of personnel needed for inactivations to the minimum practicable, a program of inactivations has been prepared and integrated with the schedule of newly constructed and converted ships joining the fleet during fiscal year 1950.

Three attack carriers, nine light cruisers, and three antiaircraft cruisers have been selected for inactivation. These ships are: U. S. S. *Princeton* (CV-37), U. S. S. *Antietam* (CV-36), U. S. S. *Tarawa* (CV-40), U. S. S. *Providence* (CL-82), U. S. S. *Little Rock* (CL-92), U. S. S. *Huntington* (CL-107), U. S. S. *Portsmouth* (CL-102), U. S. S. *Dayton* (CL-105), U. S. S. *Astoria* (CL-90), U. S. S. *Topeka* (CL-67), U. S. S. *Duluth* (CL-87), U. S. S. *Atlanta* (CL-104), U. S. S. *Fresno* (CLAA-121), U. S. S. *Oakland* (CLAA-95), U. S. S. *Tucson* (CLAA-98).

Of these vessels, the *Fresno*, *Dayton*, and *Duluth* have already been ordered to the Reserve Fleet for inactivation.

In addition to these major combatant types, it is planned to inactivate 31 amphibious types, 5 patrol craft, 4 destroyer minesweepers, and 17 auxiliary and

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small amphibious vessels. This added to the 15 major combatant types being inactivated makes a total of 72 vessels to be inactivated.

No changes are contemplated in the planned additions to the fleet during 1950 of newly commissioned vessels, which are as follows: U. S. S. *Oriskany* (CV–34), U. S. S. *Salem* (CA–139), U. S. S. *Roanoke* (CL–145), U. S. S. *Epperson* (DDE–719), U. S. S. *Basilone* (DDE–824), U. S. S. *Carpenter* (DDK–825), U. S. S. *Robt. A. Owens* (DDK–827).

Plans for 1950 emphasize antisubmarine readiness. To this end, 10 Reserve Fleet destroyers, now undergoing conversion to destroyer-escort types (DDE) and 1 light carrier (CVL), will be reactivated and commissioned durinfi fiscal year 1950, as well as 14 smaller craft.

With respect to the principal combatant types, 8 attack carriers will be active during fiscal 1950 instead of the 11 now being operated, and 170 destroyer types will be assigned to the active fleets compared to the 146 now being operated scheduled this fiscal year. The number of submarines in commission will be increased by two. These changes, plus inactivations of other types, result in a net reduction from the present active fleet strength of 755 vessels to a total strength of 731.

With respect to the naval aviation program, operating aircraft will be reduced from the present 8,183 to 7,765. Lower levels of operating aircraft and available personnel will necessitate a corresponding reduction in naval air stations and naval air facilities. It is now planned to inactivate nine stations, and to place three in a maintenance status, as follows:

To be inactivated: Naval air facility, Naha, Okinawa; Naval air facility, Adak, Aleutian Islands; Marine Corps air station, Ewa, Oahu; Naval air station, Sangley Point, Philippine Islands; Naval air facility, Honolulu, T. H.; Naval air station, El Centro, Calif.; Naval air station, Santa Ana, Calif.; Naval air facility, Weymouth, Mass.; Naval air station, Orote, Guam.

To be placed in maintenance status: Naval air station, Barbers Point, Oahu; Naval air station, Pearl Harbor; Naval air station, Glynco, Ga.

In addition, the Naval air station, Seattle, will be converted to a Naval Reserve air station, except that the alteration and repair facilities there will continue to be utilized and supported by the Regular Navy.

With respect to other-than-air shore stations for fleet support, detailed surveys are now being conducted to determine where reductions necessitated by fiscal year 1950 plans can be made in the Navy's shore establishment with the least detriment to over-all fleet support. Final determination of the specific program of shore station reductions awaits the outcome of these surveys. However, planned reductions in the level of matériel improvement and in maintenance of the operating forces will entail a general reduction in the scale of activity at naval shore establishments supporting the fleet, including the employment levels at naval shipyards.

In accordance with our understanding, I have addressed identical letters to the chairmen of the Senate Armed Services and Appropriations Committees and the Appropriations Committee of the House of Representatives. I am sending copies of this letter to the members of the Armed Services Committees and to the Military Subcommittees of the Appropriations Committees.

Sincerely yours,

JOHN L. SULLIVAN.

Mr. JOHNSON. Mr. Chairman——

The CHAIRMAN. Yes, sir. Mr. Johnson.

Mr. JOHNSON. Could one of our clerks make copies of this letter for each member?

The CHAIRMAN. A copy of it has been mailed to all the members of the committee, I understand.

I might add that in the present budget there is a reduction of $573,000,000 under the 1949 budget.

The CHAIRMAN. Now, yesterday when we recessed General Evans, representing the Reserve, was testifying.

General, have you completed your statement, or are there any other questions from any members of the committee who did not have an opportunity to ask you any questions yesterday?

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General EVANS. I have nothing to add, Mr. Chairman, unless there are some questions from members of the committee.

The CHAIRMAN. Any members have any questions to ask the general?

Mr. CLEMENTE. Mr. Chairman, I have two questions.

The CHAIRMAN. Mr. Clemente.

Mr. CLEMENTE. You made some remark with reference to the joint use of armories. Can you explain that, please?

General EVANS. The question had to do with the use of armories for the Reserve.

The problem of armories for the Reserve is quite a serious problem. because we don't have any. There isn't much opportunity at the present time to obtain any, until we can receive some appropriations from the Congress of the United States.

There is quite a little talk about the joint use of armories. I do not have much hope for that to be very effective because the National Guard armories at the present time are small. They are too small for the National Guard.

As far as the Air is concerned, they have a problem that is very similar to the Navy.

The use of armories today is quite different than it was in the old days, where you had to have a big drill floor with supply rooms. Now, you do not think in terms of the need of a drill floor so much as you do small rooms where you can have a motor mounted where people can sit around and study the motor or where they can have a radar set in a room where there can be chairs around it, and where they can study the radar set, and things of that sort.

The Navy have approached that problem in a very practical way by building so-called temporary construction.

We are hoping that we can persuade the Appropriations Committee to give us money that will allow us to build construction that will be somewhat similar to that of the Navy. It certainly is all that we need. We do not need and we do not want monumental buildings. We would be perfectly delighted to have some sort of temporary construction that would house equipment and allow the units to train.

Does that answer your question, Mr. Clemente?

The CHAIRMAN. Any further questions?

Mr. CLEMENTE. One more question, Mr. Chairman.

The CHAIRMAN. Go right ahead.

Mr. CLEMENTE. Have you received any surplus equipment, left over from World War II?

General EVANS. Yes; there has been a very small amount of equipment that has been turned over to the Reserves. It is very small.

Any questions by any other members?

Mr. HÉBERT. Mr. Chairman, may I ask one thing?

The CHAIRMAN. Mr. Hébert.

Mr. HÉBERT. Just for the record, and to clarify something in my mind, General, as I understand it the Reserve Association is constituted of officers?

General EVANS. The Organized Reserve Corps?

Mr. HÉBERT. Yes.

General EVANS. No; that is not correct.

Mr. HÉBERT. It doesn't show anywhere in the record what constitutes exactly the Organized Reserve. I want to differentiate between

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the Organized Reserve and the National Guard. What is the difference?

General EVANS. Prior to World War II there was a distinct difference because in those days the National Guard consisted of officers and men, and the Reserve between the two World Wars did not have any enlisted men to speak of. There was authorization for it, but we didn't have them.

Now, since the end of World War II there have been some 400,000 enlisted men from the Army and some 180,000 from the Air, making a total of something over 600,000, who were enlisted men, as such, in World War II, who enlisted in the Army or Air Reserve.

Now, they are in the Reserve at the present time as enlisted men, unless their enlistment has run out and they failed to renew. As I said yesterday, the enlistment was for 3 years, and most of them came in in 1945, therefore their 3-year enlistment ran out last year, and many of them have failed to reenlist.

Mr. HÉBERT. Well, what are the demands of duty, General, on the National Guard as compared to the demand of duty on the Organized Reserve? That is what I am confused about. Both have certain obligations.

General EVANS. Oh, yes.

Mr. HÉBERT. Both have certain demands.

General EVANS. I spoke of three types of units, Mr. Hébert, yesterday that exist and are planned on in the Reserve. They are sometimes known as class A, B, and C units. The A is a unit that has a full complement of officers and a full complement of men. Therefore, that unit, that A unit, is just the same as the National Guard so far as personnel is concerned. It is supposed to have the same obligations as the National Guard. It has the same number of drill periods per year. It is supposed to have the same armory facilities, the same storage facilities, the same equipment——

Mr. HÉBERT. Why the duplication of effort? Why couldn't both of these organizations be merged into one unit of the National Guard?

General EVANS. Of course——

Mr. HÉBERT. Since they duplicate efforts, they duplicate demands, they duplicate obligations——

General EVANS. That is true. It could be. It could all be National Guard or all Reserve.

It so happens that the law at the present time provides for a National Guard and for a Reserve. That is the National Defense Act which provides for that at the present time.

Mr. HÉBERT. Of course, that doesn't make it right because the law provides for it. I am just wondering why the duplication of effort in an era when we are trying to unify services.

The CHAIRMAN. Well, Mr. Hébert, there is not a duplication of effort. The National Guard has a certain definite function assigned to it, which is to be in a state of readiness and organized to support the policies of the War Department in case of national emergency and in peacetime to be the strength of the governors.

The Reserve is based on the premise that it is an organization of patriotic men who have or who have not had previous military training and desire to be organized for the purpose in case of emergency to be better equipped than if they hadn't been organized.

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It is entirely separate and distinct; is that correct?

General EVANS. Yes; but it is a little stronger than that, Mr. Chairman, at the present time, because the present concept of the Reserve is that there are certain units of the Reserve that are just as much organized as the National Guard.

The CHAIRMAN. All right.

Any other questions? We have to move along, gentlemen.

Mr. JOHNSON. May I ask a question?

The CHAIRMAN. All right, sir.

Mr. JOHNSON. Every National Guard officer is also a Reserve officer, automatically, isn't he?

General EVANS. No.

The CHAIRMAN. Oh, no.

Mr. JOHNSON. I thought they had two commissions: One in the State and one in the Reserve.

General EVANS. That was the case at one time, but I do not believe it is that way now.

General Reckord is here. He can explain that better than I can.

General RECKORD. Mr. Johnson, at one time the law provided that every National Guard officer would receive a Federal commission in the Organized Reserve. That was changed. At the present time the Federal commission the National Guard officer receives is in the National Guard of the United States. But grade for grade they are equal—they are alike and equal—with the ROTC.

Mr. JOHNSON. Then, the strength that you gave yesterday was the strength of the Reserves?

General EVANS. Only.

Mr. JOHNSON. All right.

General EVANS. That is not a duplication.

The CHAIRMAN. All right.

Thank you very much, General——

General EVANS. One other thing, Mr. Chairman. You asked yesterday—I believe it was Mr. Durham—that a copy of our National Air Force Committee report be inserted in the record.

The CHAIRMAN. All right.

General EVANS. I hand this to the clerk.

(The report is as follows:)

INTERIM REPORT OF AIR FORCE AFFAIRS COMMITTEE OF RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

SECTION I. AUTHORITY AND ASSEMBLY

1. The air force affairs committee is established as one of the national standing committees of the Reserve Officers Association of the United States, under article B-7, paragraph (c), of the revised constitution adopted at the Denver convention, June 16–19, 1948. The constitution provides that, "This committee shall act in an advisory capacity on all matters of policy and procedure concerning the Air Force."

2. This committee met on call of the chairman, November 20–21, 1948, in Kansas City, Mo.

Members present: Lt. Col. A. H. Wait, USAFR, chairman; Col. M. J. Brummer, USAFR, vice president, air force affairs, ROA (ex officio); Col. D. Arthur Walker, USAFR; Maj. Fred C. Armagast, USAFR; Capt. Milton Zacharias, USAFR, junior vice president, air force affairs, ROA (ex officio).

Present representing USAF: Col. W. C. Eareckson, USAF, commanding officer, 2238 AFRTC; Lt. Col. John C. Crain, USAF, headquarters USAF office, chief civilian components group—DCS/O.

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Present representing national headquarters, ROA: Lt. Col. John W. Richardson, USAFR, past vice president, ROA; Maj. Kenneth P. Laird, USAFR, director, air force affairs, ROA; Capt. R. L. Wynes, USAFR, executive committeeman, air force affairs, ROA.

SECTION II. PURPOSE

The purpose of the meeting was to aid national defense. and strengthen the United States Air Force, through a consideration of problems of organization, administration and training of the Air Force Reserve in order to make appropriate recommendations to increase the efficiency and effectiveness of the Reserve program.

SECTION III. GENERAL COMMENTS

1. The Air Force affairs committee represents a membership of 37,000 Air Force officers comprising the air force section of the Reserve Officers Association.

2. Although numerous problems were discussed, the committee agreed unanimously to limit the present report to problems involved in the organization, administration. and training of the Volunteer Air Reserve. These problems are the most pressing and affect the greatest number of Air Reserve officers. The committee plans to continue the study of Air Force Reserve problems at future meetings.

3. The committee has attempted to be constructive in its criticism and objective in its recommendations.

SECTION IV. THE PROBLEM OF THE VOLUNTEER AIR RESERVE

Under Air Force Regulation 45–5, the Air Force Reserve consists of the Organized Air Reserve, Volunteer Air Reserve, Inactive Air Reserve, and Honorary Air Reserve. Present regulations and future programing for the Volunteer Air Reserve provide for no organized training, no inactive duty pay, no promotion to higher grade, no active duty, in fact, little incentive to retain Reserve status.

SECTION V. FACTS BEARING ON THE PROBLEM

1. The Volunteer Air Reserve, as presently constituted, comprises approximately 85 percent of the total Air Reserve forces, or about 200,000 out of a total 234,000 officers and men, using figures as of January 1, 1948.

2. A large, active, well-trained Volunteer Air Reserve is necessary to provide continual replacements for T. O. and E. units and mobilization assignments as personnel drop out for business or personal reasons, or change their place of residence.

3. The Volunteer Air Reserve can, if properly trained and their interest preserved, furnish a large pool of qualified officers in addition to those in the T. O. and E. units and mobilization assignments for the expansion of the Air Force in term of emergency, eliminating, at least in part, the necessity for commissioning untrained personnel direct from civil life.

4. The Air Force needs the good will and support of this large segment of the Air Force Reserve in implementing national defense policy and in furthering Air Force projects.

5. A large, well-trained Volunteer Air Reserve is desirable for the purpose of maintaining continued pressure on T. O. and E. and mobilization personnel to operate at peak efficiency through the knowledge that some Volunteer Reservist is anxiously waiting to take his place.

6. Although little or no assistance has been received from the Air Force, many composite squadrons have developed programs for training the local volunteer air reservist. In certain instances, the expenses incident thereto, including rental of classroom and training space, have, of necessity, been paid from personal funds. The allocation of surplus equipment, little better than salvage, would greatly assist these locally developed programs.

7. The interest of a limited number of Volunteer Reservists has been retained by the efforts and initiative of individual officers in the face of a discouraging lack of support from the Air Force. This situation cannot, however, be expected to continue.

8. The Volunteer Air Reserve contains many mature and efficient officers with varied experience and skills, whose retention in the military service is highly desirable in the interest of national defense. These officers are more desirous

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of recognition of the value of their service and in promotion to higher grade, when qualified, than in monetary returns.

9. Present membership in the Volunteer Air Reserve in no way constitutes a reflection on an officer's interest, ability, or efficiency. Limitations on M. O. S., grade and/or numbers in T. O. and E. or mobilization assignment, or his place of residence, may be responsible for an officer's exclusion from the T. O. and E. or mobilization assignment program. Relegation to the Volunteer Air Reserve has, however, come to be considered as a failure to meet T. O. and E. or mobilization assignment standards with resulting stigma attached.

10. By proper use of the talent in the Air Force Reserve, it should be possible to develop a training program for the Volunteer Air Reserve which will meet the needs of the reservist and which can be conducted for a cost to the Government which would be negligible in comparison to over-all Reserve appropriations.

SECTION VI. CONCLUSIONS

1. A large, interested, well-trained Volunteer Air Reserve is important in national defense and is essential to the implementation of the Air Force T .O. and E. and Mobilization Assignment programs.

2. The Volunteer Air Reserve contains a pool of reserve manpower on which the Government has spent large sums of money in specialized military training and this training should be conserved for use in future emergencies.

3. Present policies and regulations have taken little cognizance of the Volunteer Air Reserve. Where they have, the results have been to discourage Reservists from continuing in the Reserve, with the consequent dissipation of trained manpower.

SECTION VIII. RECOMMENDATIONS

1. That the use of the designation, "Volunteer Air Reserve" be discontinued. The Air Force Reserve would then consist of the Organized Air Reserve, Inactive Air Reserve, and Honorary Air Reserve. The Organized Air Reserve would be divided into two categories, without distinguishing names; category one, comprising those Reservists assigned to T. O. and E. units or having Mobilization Assignments, and, category two, comprising those active reservists who do not have such assignments.

2. That inactive duty pay be confined to those Reservists in category one of the Organized Air Reserve, as defined above, in line with present policy.

3. That Air Force regulations be revised to permit the promotion to next higher grade of qualified Reserve officers in category two, as well as those in category one, as defined above, of the Organized Air Reserve. Until a grade structure is established for category two, the maximum number of officers in any grade could be based on the percentage of officers in the respective grades in the Regular Air Force.

4. (*a*) That allocation be made from available funds, and provision be made in future budget estimates, for funds and personnel to permit the operation of a realistic ground training program for category two of the Organized Air Reserve.

(*b*) As a part of such a training program, it is recommended that steps be taken to implement the provisions of paragraph 5, AF Regulation 45–10, permitting inactive duty training without pay by establishing and publicizing training assignments, similar to Mobilization Assignments, at various staff levels. Officers volunteering for such training assignments to serve without pay and to be in addition to the number of officers holding regular Mobilization Assignments.

5. Training directives and syllabi should be promulgated by the Air Force Command charged with the training of the Air Force Reserve in order to insure uniformity of such training.

For members of the committee.

A. H. WAIT,
Lieutenant Colonel, USAFR, Chairman, Air Force Affairs Committee, Reserve Officers Association.

The CHAIRMAN. Thank you very much——

General EVANS. Just one thing. I want to clarify one statement that I made yesterday. I am afraid it may be misunderstood.

Mr. Cole asked, Did I recommend a Reserve as required by the national security or did I recommend a Reserve with no limitation

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except as imposed by budgetary limitations? I would like to make just one short statement about it.

In considering my answer, in which I replied in substance I favored the latter type of Reserve, I am concerned that the answer might be misconstrued.

Obviously, I recommend no greater Reserve than that required by national security. On the other hand, when we look at World War I only, a comparatively small number of Reserves were required. In World War II we had over 12,000,000 men and women in the armed services. In World War III—and I pray God there may not be one—who can say what the top figure may be?

Mr. Chairman, thank you very much for allowing me to appear before the committee.

The CHAIRMAN. Thank you, General.

Now, Mr. Secretary Symington, you and General Vandenberg come around, please, and also Mr. Whitney—all of you come up. Now, Mr. Secretary, you got the background of things during your absence. I don't know whether we are in the rocks or in the shoals, but we are here now to get from you the benefit of your views and that of your military experts.

Now, go ahead, sir.

Secretary SYMINGTON. Thank you, sir.

As you know, sir, I have been in the Appropriations Committee for 2 days. Otherwise I would have been here.

I was very sorry to hear, and in some places to read, the testimony that was given by the National Guard people. I have a statement here with respect to our comments on that.

The CHAIRMAN. Go right ahead, sir.

Secretary SYMINGTON. And, also, when I get through, Mr. Whitney, who sat on the Gray Board, and under whom is the function of the civilian components, and General Quesada and his aids, as well as General McConnell, may have some thoughts.

I only had a chance to read this testimony last night, but I have a short statement here commenting on it.

When I came into the Air Force 3 years ago, about 5 months after VJ-day, it became at once obvious that one of the most serious peacetime problems the Air Force would have would be the so-called civilian components: The Air Reserve and the Air National Guard.

Prior to the war the Air Force consisted of some 25,000 people. The logic of the new war increased this, in some 4 years, to over 2½ million people. Therefore, when this force was demobilized there were hundreds of thousands of young Americans anxious to serve their country but with no Reserve structure to take care of them. Efforts were made to handle this, but the amount of money was very limited and the general problem was very great.

As soon as the war was over there were many areas of disagreement between the Army and the Air Force. This was especially true in the National Guard Bureau. And one of the things the Air Force looked forward to with greatest satisfaction was the possibility of controlling their own civilian components comparable to the way the Navy controlled theirs.

Nevertheless, in the final days of the unification bill, when everybody was compromising in order to get any bill, the National Guard

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interests wedged into the act the fact that the National Guard Bureau would continue to handle the Air National Guard along with the National Guard. And this meant that whereas the Air Forces was equal under the Unification Act with the other services it would in the usual case be under Army officers with respect to its Air Guard.

In addition to this condition, the Air Force had another unfortunate problem. Instead of the streamlined position of the Navy with respect to its Air Reserve, as one Reserve: The Navy Air Reserve, the Air Force had both the Air National Guard and the Air Reserve—one controlled by the National Guard interests and the States, and the other by the Air Force.

As a result of this condition in many localities, there was and is heavy, bitter disagreement between the Air National Guard and the Air Reserve, and it is generally taken out in the end on the Regular Air Force.

The situation with respect to the Air National Guard and its operations could not be more different than that of the Army National Guard in its operations. Perhaps two illustrations would suffice. The National Guard can drill with rifles and field equipment, but the Air National Guard must at all times have highly intricate planes equipped and maintained at the highest level of efficiency in order to prevent fatal accidents. Secondly, there is no State problem of State lines in the National Guard. In the State where I live, if at its two main airports the wind is in a particular direction, it is not possible to gain altitude without going over the adjoining State.

As an illustration of the problem of the Air Reserve, in 1949 $73,000,000 was appropriated for the Air Reserve to handle 419,282 military personnel. The Air National Guard was given $78,000,000 to handle 41,188 military personnel.

The CHAIRMAN. Read those figures again, Mr. Secretary.

Secretary SYMINGTON. Yes, sir. As an illustration of the problem of the Air Reserve, in 1949 $73,000,000 was appropriated for the Air Reserve to handle 419,282 military personnel. The Air National Guard was given $78,000,000 to handle 41,188 military personnel.

In other words, the Air Reserve was given $174 a year per capita and the Air National Guard $1,893 per man, or over 10 times as much.

But that is not all the story. In addition to those figures—I didn't have the time to get the exact figures on planes—we assign our planes to the Air National Guard and the planes we assign to them are all modern planes and the planes assigned to the Reserves in the main are trainers. So the figures, when we get the final figures for you, will be very much more in favor of the Air National Guard as against the Reserve.

After the National Security Act was passed, and in an effort to streamline the Reserve units of the country in the interest of the taxpayer, the so-called Gray Board was established. The composition of this Board included Assistant Secretary Whitney here, Assistant Secretary Gray, and Assistant Secretary Brown of the Navy, as well as the National Guard officer with perhaps the outstanding war record of any National Guard officer in World War II. This Board was unanimous in favoring control of the Air National Guard by the Air Force.

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Mr. HEBÉRT. Mr. Chairman, will the Secretary identify the individual he just referred to?

Secretary SYMINGTON. Lieutenant General McClain, sir, who rose from a relatively low position to commanding a full Army corps.

Mr. HEBÉRT. I just wanted his identification.

Secretary SYMINGTON. Yes, sir.

This Board was unanimous in favoring control of the Air National Guard by the Air Force. And this was after eight months of intensive study and the hearing of scores of witnesses. And the Secretary of Defense and the President approved the findings of the Gray Board with respect to the Air Force, and, of course, so did we.

Almost at once we were notified by the National Guard interests that they would battle us to the end against this legislation. I was told personally that if we attempted to take the Air National Guard out of the National Guard Bureau the National Guard would oppose any group program recommendation whatever by the Air Force and would oppose the principle of flying pay.

The CHAIRMAN. They were getting ready to fight you, then, weren't they?

Secretary SYMINGTON. Obviously this could not be considered as against what we thought was right in the interest of security of the United States.

After discussion with General Reckord it was agreed that a committee should be formed to study this question, which would include the head of the National Guard Bureau, and that the Air Force and the National Guard would make every effort to abide by the findings of this committee. It was agreed that it might be possible to maintain State identity and at the same time have the Air Force given that control considered essential to national security. And this committee has met twice.

Nevertheless, despite what is going on along those lines, the National Guard now considers it advisable to take the opportunity of this authorization bill to not only maintain the position of the National Guard interests over the Air Force but also to try to greatly increase the number of people and the number of groups.

In order to promote that position, the National Guard people before this committee have made implications with respect to why this bill was drawn, and the implications are not true.

There is nobody that knows better than the chairman that the bill was drawn in all sincerity and with no ulterior motives.

The CHAIRMAN. That is what I tried to tell them the other day.

Secretary SYMINGTON. Thank you sir.

General Vandenberg in that connection said before your committee 2 days ago, and I quote:

> I would like to emphasize that the language of this section is broad enough to cover either the present type of organization of the civilian components or any organization which may be adopted by the Congress as a result of the Gray Board's recommendations or any recommendations. The organization of either the Air National Guard or of the Reserve need not be affected by this legislation.

In our opinion, many implications and certain statements in the testimony in addition to the above are not true.

The criticism of the Air Reserve is possibly justified because it has been a most difficult job over a period of years. But a comparison

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between the relative progress of the Air Reserve and the National Guard is extremely unfair because in all cases wherever possible the Air Forces favored the National Guard this because of the relative priority position the Air Force gave the National Guard in the over-all defense structure of the United States.

Now, it its effort to maintain and increase its control of air power, the National Guard interests used the favored position given it by the Air Force as a weapon against the ability of the Air Force.

May we ask you to consider the paradoxical position which the Air Force is now placed in. The President of the United States only recently criticized the Air Force publicly—its Reserve picture—and compared it unfavorably with the Navy, which has the simple structure of one Reserve unit—a very fine Reserve unit. And yet at this time we are asked by the National Guard interests to perpetuate this condition, in a bill in which this subject is not paramount, that very dual system which has made it impossible to administer efficiently in the past.

We believe that if this matter is to be included in the authorization bill it should not be decided until the findings of the ad hoc committee agreed upon makes its report and further investigation is made by the subcommittee suggested by the chairman.

The present wording of the bill will permit the status quo of the National Guard and any adjustment deemed advisable by the Congress.

Thank you, Mr. Chairman.

The CHAIRMAN. Now, Mr. Secretary, you said in your statement that some kind of negotiation had been open between you and the National Guard looking forward to solving this problem. Now, what was the nature and what progress was being made? You said something about working it out, whereby there was a certain amount of State control and it being under the Air Corps instead of through the National Guard Bureau—is that what you had in mind?

Secretary SYMINGTON. That is correct, sir.

The CHAIRMAN. As I caught what you meant, it was that the control of the Air National Guard would not be channeled through the National Guard set-up. It would deal with the ground force, but it would be under the Air Corps—that is, under you and under your Department; is that correct?

Secretary SYMINGTON. That isn't necessary, sir.

The basic reason for starting this ad hoc committee was in order to see if we could adjust the differences between the National Guard interests and the Air Force. They had their feeling about it and we had ours.

The more I have seen of it the more satisfied I am that we cannot have two Air National Guards so totally different from the concept of the National Guard—strikes, disturbances, and so forth—bucking each other all over the country in various communities, especially as we have been forced to choose——

The CHAIRMAN. When you use the word "two Air National Guards," you mean the Reserve and the Air National Guard?

Secretary SYMINGTON. Yes, sir; two Reserve components would be the right way to put it.

The CHAIRMAN. All right.

Secretary SYMINGTON. Especially as it has been necessary for us to choose one against the other, with the constant bitterness that has come up.

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Therefore, we thought if we had the committee—incidentally, the committee was our suggestion, and we also suggested that the head of the National Guard Bureau, General Cramer, be on the committee, and he has accepted, and the committee has also met twice—we might come in with a plan to present to you and this committee which would handle this matter without bringing it up as a matter for an authorization bill.

The CHAIRMAN. What progress are you making?

Secretary SYMINGTON. I would think General Quesada could answer that better than I could. He is the chairman.

The CHAIRMAN. What progress are you making, General?

General QUESADA. Mr. Chairman, I would say we are making satisfactory progress. We have not come to specific conclusions. We have had two meetings. We are exploring the possibilities most pleasantly and successfully.

The CHAIRMAN. Well, heretofore the National Guard and the Air Corps have been working on this problem fairly satisfactorily?

General QUESADA. I would say the committee is going along satisfactorily, sir.

The CHAIRMAN. Do you think there will be any likelihood of reaching a satisfactory solution of this control between you two?

General QUESADA. I naturally would say "Yes," Mr. Chairman, because I am the chairman of the committee. I always hope for success in an activity——

The CHAIRMAN. Well, the chairman of a committee doesn't always have that power.

Now, if the status quo is maintained, do you think that you could reach a satisfactory agreement with the Air National Guard in reference to all phases of it so that you can work in harmony and they would not, as the Secretary said, be fighting this and that proposal of the Air Corps?

General QUESADA. The answer to that is a categorical "Yes." I certainly hope to such an end. And I have reason to believe that an end to that effect could be reached.

The CHAIRMAN. Now, how long a time will it take you to reach an agreement?

General QUESADA. We have set a goal of 6 weeks. Two weeks have transpired since we established the committee. We are trying to conclude it within 6 weeks. And we have so stated to all.

Mr. COLE. That is the 1st of March, then?

General QUESADA. We are trying to complete it by the 1st of March; yes, sir, Mr. Cole.

The CHAIRMAN. Now, let me digress from that thought and ask the Secretary this: You said $75,000,000 was given to the Reserves?

Secretary SYMINGTON. Seventy-three million, sir.

The CHAIRMAN. Seventy-three million. And about the same amount was given to the National Guard?

Secretary SYMINGTON. $5,476,000 more, or $78,476,000.

The CHAIRMAN. The Reserves got how many million?

Secretary SYMINGTON. The Reserves got $78,476,000.

The CHAIRMAN. And——

Secretary SYMINGTON. I beg your pardon. The Reserves got $73,000,000.

And what did the Guard get?

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Secretary SYMINGTON. $78,476,000.

The CHAIRMAN. Seventy-eight million?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. And you concentrated—of course, you spent all that money, haven't you?

Secretary SYMINGTON. I do not know as to the National Guard. The Reserves have not expended all that money, but expect to spend all that money this year.

The CHAIRMAN. All right.

Then you practically spent it and built up a very fine National Guard, have you not?

Secretary SYMINGTON. I think the National Guard has done well; yes, sir.

The CHAIRMAN. I think some witness testified there were 36,000 in the Guard, and you had about 27 groups, I think, in that. So you concentrated on the Guard?

Secretary SYMINGTON. We have concentrated on the Guard. We have thrown nearly all of our——

The CHAIRMAN. And you haven't used up your $73,000,000 on the Reserve. You couldn't concentrate on both of them at the same time, so you selected the Guard because you gave it such a prominent part in your continental defense scheme.

Secretary SYMINGTON. Mr. Chairman, I would like to comment on that a little.

The Guard was considered to be part of the first-line defense of the United States.

The CHAIRMAN. That is right.

Secretary SYMINGTON. The Air Reserve we have done as much as we could for, but as we pointed out we had some 419,000 people in the Air Reserve and a great many more who wanted to get in the Air Reserve if they felt there was any chance of flying, whereas we only had a planned 41,000 in the Guard.

In addition to that, we gave the Guard every favored situation that we could, plus modern airplanes as against the old trainers we gave the Reserve.

The CHAIRMAN. Now, then, getting back to another thing: You think there should be only one unit outside of your Regular Establishment?

Secretary SYMINGTON. I beg your pardon, sir?

The CHAIRMAN. You think there should be only one group, and that would be the Reserve, instead of the Guard?

Secretary SYMINGTON. Not necessarily so, sir.

The CHAIRMAN. All right. What would be your plan with reference to the Guard? Just state that, sir?

Secretary SYMINGTON. Well our thought was we get the authorization bill—which, so far as I know, everybody though we should have: The Army and the Air Force along with the Navy—and then we would sit down with the Guard and this committee and see if we could reach an understanding, which I feel that we could. There is no desire for us to get any prerogative that isn't in the interest of security.

The CHAIRMAN. Then, what control would you advocate, or are you advocating over the Guard?

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Secretary SYMINGTON. I would like General Vandenberg to comment on that, with respect to what he thinks he needs if we are going to have anything that means anything in the way of air defense.

The CHAIRMAN. All right.

General VANDENBERG. Mr. Chairman, the reason that we took up this method of coming together with the Reserve, the National Guard, and the Regular Air Force, under the chairmanship of General Quesada, was to take a look at the present rules and regulations and control that the Air Force has over the civilian components—to look at it with the view to seeing whether or not the present rules and regulations and methods gave us the best defense for the dollar, and to come up with the Reserves and the National Guard and the Regular Establishment looking at this problem from an over-all national defense point of view to see whether if by a slight adjustment here and a slight adjustment there we couldn't come up with an agreed solution where everybody could say that the control that we have is something to most efficiently spend the taxpayers' dollar for he air defense of the United States.

For us to say now while this ad hoc committee is going on exactly what control we need is something that I would rather not try and make a statement of until the committee comes up and we get the National Guard point of view, the Reserve point of view, and the Regular point of view, so that we all see together what the real problem is in this thing.

We do, Mr. Chairman——

The CHAIRMAN. It looks like we are being somewhat driven up against the proposition that we either have to decide this issue now or wait and see whether or not you could reach an agreement; is that it?

Secretary SYMINGTON. I wouldn't think so because if we write the bill as you originally had it, sir, this language in no way prevents any adjustment that could be made in the future.

Mr. COLE. Except that it gives you authority to accept or reject any recommendation, whatever it may be, that the Quesada Board may make.

Secretary SYMINGTON. Well, Mr. Cole——

Mr. COLE. There is that big difference.

Secretary SYMINGTON. I want to promise you, I am not looking for any authority.

Mr. COLE. I know that.

Secretary SYMINGTON. We are just looking for the best security. And if that was in the bill, that part of it, I would be delighted to see it removed.

Mr. COLE. I didn't mean to intimate that you were. I am only speaking that it is from that standpoint that we must consider—at least myself—to what extent the words used in the act convey authority.

Secretary SYMINGTON. Well, the question that we would like to see held open, until this committee has had a chance to study and we had had this ad hoc committee report, is not so much the question of any authority in my view. It is the question of what is the best thing for the country, because when the National Guard problem came up in the Constitution it certainly didn't have any conception of an Air National Guard.

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Mr. ARENDS. Mr. Secretary, then you do expect to hold this particular phase of the question in abeyance until this report comes out?

Secretary SYMINGTON. We already assured that to General Reckord, before his testimony of this week.

Mr. JOHNSON. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. JOHNSON. Well, Mr. Secretary, doesn't the issue boil down to this: Unless you amend the Unification Act you would have to have an Air National Guard because it provides that there?

Secretary SYMINGTON. Right, sir.

Mr. JOHNSON. Do you intend by agreement to try to warp the law into something that isn't there?

Secretary SYMINGTON. We know we have to go to Congress on this, Mr. Johnson.

Mr. JOHNSON. Yes; but you have to face the problem whether or not you want to pry loose from the National Guard the air forces.

Secretary SYMINGTON. We never said we did want to pry loose the Air National Guard.

There has been talk, too much talk, about federalization. But I thought we had it agreed that we were going to have this ad hoc committee.

Mr. JOHNSON. No. The point is that in the law there is that authority and these men are picked out to carry it out. Now, you can't expect them to give if the law imposes a duty on them, without amending the law, can you?

Secretary SYMINGTON. We certainly haven't asked you to do anything illegal.

Mr. JOHNSON. Well, I know. But apparently I gathered from what both of you said that there are certain obstacles in the way of maintaining a good Air Force Reserve, and National Guard, and that the law the way it is drawn is one of the obstacles.

Secretary SYMINGTON. Now, what is the trouble in the way the law is drawn that you are referring to, sir?

Mr. JOHNSON. What I am referring to is that by that law they put under the jurisdiction of the National Guard the Air National Guard.

Secretary SYMINGTON. Yes, but that doesn't read against this bill.

Mr. ELSTON. Mr. Chairman, may I ask a question——

Secretary SYMINGTON. It doesn't read against the language of this bill.

Mr. JOHNSON. That is the issue, whether you want to take that out and have them under you.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. I would like to ask Mr. Secretary Symington what State control would remain over the Air National Guard if this legislation were to pass in present form?

Secretary SYMINGTON. Mr. Elston, I would like to go back to Mr. Johnson's question, sir.

Mr. ELSTON. All right.

Secretary SYMINGTON. The answer to that is there would be no change of any kind whatever.

Mr. ELSTON. Then perhaps the language in 201 might require some explanation. For example, it says:

* * * The Air Force of the United States is authorized to consist of the number of organizational units, with their installations and supporting and

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auxiliary elements, including tactical, administrative, logistic, air transport, and training, as may be determined by the Secretary of the Air Force consistent with the numbers of personnel and aircraft hereinafter authorized.

Just what does that language mean?

Secretary SYMINGTON. Well, first, we have in the bill the language for 61 Reserve groups. It does not break those groups down into exactly which should be National Guard or which should be Reserve.

I think that General Quesada, who also has a statement, if he read it on the question of the bill itself—he is the chairman of this ad hoc committee—might clarify some of the points that apparently are in your mind.

Mr. ELSTON. Well, let me ask you this: If the language remains as it is, couldn't the Secretary of the Air Force say that the National Guard could only have one group and the Reserve should have all the other groups?

Secretary SYMINGTON. The answer to that would be "No."

Mr. ELSTON. Well, what limitation is placed in the law?

Secretary SYMINGTON (addressing General Quesada). Would you like to comment on that?

General QUESADA. I have that in my talk and I will extract that portion of it from it.

Mr. ELSTON. I don't say you will try to do that. I don't want to intimate that for a moment.

General VANDENBERG. It is impossible for that to be done.

Mr. ELSTON. It could be done, couldn't it?

General VANDENBERG. No, sir.

General QUESADA. That is in my talk.

Secretary SYMINGTON. Mr. Chairman, will it be possible for General Quesada to read his discussion of this bill, he being chairman of this committee?

I think, Mr. Elston, that point will be answered, sir.

Mr. ELSTON. All right.

General QUESADA. That will be answered.

The CHAIRMAN. Go right ahead, General.

General QUESADA. My name is Quesada. E. R. are the initials.

STATEMENT BY LT. GEN. ELWOOD R. QUESADA, UNITED STATES AIR FORCE

General QUESADA. Mr. Chairman and members of the committee:

I would like, with your permission, to eliminate some of the confusion which must be in the minds of us all as a result of proposals which have been interjected by representatives of the Reserve forces in their statements recommending certain amendments to H. R. 1437. I hope my explanation will enable us to isolate the intentions of section 201 of the proposed bill from the attendant confusion and to arrive at a mutual determination as to the propriety of those intentions. We have had prolonged discussions in which we have used the terms "United States Air Force," "Air Force of the United States," "Air National Guard of the several States, Territories, and the District of Columbia," "Air National Guard while in the Federal service," "Air National Guard of the United States," "Organized Reserve Corps," "Volunteer Reserve," and others. These together with the recitations

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of pertinent—and I might add confusing—statutes governing the authority for the organization and composition of complex and hazily defined components of our National Military Establishment leave me unable to arrive at any conclusion as to exactly what each of us had in mind.

It is difficult, for example, for me to determine which of the several definitions of the National Guard is applicable in a given instance, what the distinction is between the National Guard being "called" and "ordered" into the Federal service, and what patricular structure of the National Guard is affected when it is dormant as the National Guard of the several States, Territories and the District of Columbia,—or when it is dormant as the National Guard of the United States. I find this particularly complicated when both terms appear, to the best of my knowledge, to include identical personnel organized into identical units. Such confusion is certainly not compatible with the part to be played by the National Guard in existing war plans.

I am sure this confusion is responsible to a considerable degree for the decisions of the Secretaries of the Army and the Air Force to convene their committees to study problems pertaining to the Reserve forces. I feel equally sure that we all share in the hope that the deliberations of these committees will result in the preparation and enactment of legislation which once and for all will establish the structure of the Reserve forces best suited to meet the requirements of national defense.

As a result of the chairman's comments of Monday morning regarding confusion as to the difference between the United States Air Force and the Air Force of the United States, we have a proposed change to the language of the bill which we believe will assist in clarifying that point. The United States Air Force is the Regular Air Force while the Air Force of the United States consists of the Regular Air Force and all the reserve components. We believe the terminology of our suggested revision to be in line with Mr. Kilday's remarks on this subject and in accordance with the desire of all of us to make the wording of the proposed legislation as understandable as possible. We, therefore, suggest, in order to eliminate this portion of the confusion which has arisen, the first sentence of section 201 of the bill be deleted, and the following substituted in lieu thereof:

The Air Force of the United States shall have an authorized strength of 70 Regular Air Force groups, 22 separate regular Air Force squadrons and 61 Air Force Reserve groups, together with necessary supporting and auxiliary Regular and Reserve Air Force units.

I would like with your permission to set forth the attitude of the Department of the Air Force in respect to the wording "Air Force Reserve groups." This appears to be the main point of difference upon which I am qualified to speak. It is not our intention to eliminate the Air National Guard of the United States by the proposed legislation. Any accusation to the contrary is unjustified. We believe that the term "reserve" includes all components, individuals, and units of the Air Force of the United States now or hereafter established, which are not included in the Regular Air Force. The provisions of section V, of the act of June 15, 1933, Seventy-third Congress, which revised section 58 of the National Defense Act of 1916, indicate specifically that it was the intention of the Congress to in-

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clude the National Guard of the United States as a component of the Reserve forces. With your permission I will quote the applicable text of this section:

> * * * The National Guard of the United States is hereby established. It shall be a reserve component of the Army of the United States and shall consist of (those) federally recognized National Guard units, and organizations, and of the officers, warrant officers, and enlisted members of the National Guard of the several States, Territories, and the District of Columbia * * *.

The application of this and other statutes pertaining to the National Guard was extended to the Air National Guard of the United States pursuant to the provisions of Transfer Order No. 10, Office of the Secretary of Defense, dated April 27, 1948. This transfer order was issued under the authority contained in the National Security Act of 1947, Public Law 253, Eightieth Congress.

In the course of the past few hearings of this committee it has been indicated that the provisions of section 201, as originally drafted, would offer an opportunity to destroy the Air National Guard of the United States. I deny that this contention has any basis in fact. The Air National Guard of the United States is now established by statutory laws with which H. R. 1437 is not in conflict. I submit that so long as it is the will of Congress that these laws remain in effect, it is not within the power of any appointed official to destroy the Air National Guard of the United States. As a point in case, may I cite the proviso to section 60 of the National Defense Act which, with respect to the National Guard, states, and I quote:

> *Provided*, That no change in allotment, branch, or arm of units or organizations wholly within a single State will be made without the approval of the governor of the State concerned.

It is not our understanding that H. R. 1437 will revoke section 60 of the National Defense Act.

In view of the attitude of the Department of the Air Force which I have just recited, it is our considered opinion that testimony before this committee as to the efficacy of the Air National Guard as a component of our Reserve forces is irrelevant to the proposed legislation. Neither do we believe that discussions as to the effectiveness or, as some would have it, the lack of effectiveness of other components of our Reserve forces have any bearing on this particular legislation.

A comparison has been drawn unfairly between the effectiveness of the Air National Guard and the effectiveness of the United States Air Force Reserve, suggesting that the National Guard's relative position is the result of its own efforts. May I liken this condition to that of a man having seven sons. This man spends 60 percent of his individual budget in providing education for one of them and 40 percent in providing education for the other six. In later years, the one receiving the bulk of the benefits persecutes his father for the neglect of the other six. However, the analogy is not complete unless the committee is made aware of the fact that the Air National Guard has been given all the tactical aircraft, thereby leaving none for the Air Reserves. The value of these aircraft is not reflected in the budget figures since they were made available by the Air Force without cost to National Guard appropriations except for the cost of removing some of them from storage.

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At the present time there are a total of 5,382 officers in the Air National Guard, while there are 232,903 officers enrolled for training in the Air Reserves, or a ratio of Reserve officers to Guard officers of more than 42 to 1. These comparisons would not support the accusations that the Department of the Air Force is trying to destroy the Air National Guard.

We do know, in the light of existing and foreseeable international conditions, that we require for purposes of military security an Air Force of the United States composed of such Regular units as are incorporated in the terms of the proposed legislation, augmented by 61 groups of Reserve forces.

By direction of the Secretary of Defense, and with the approval of the President, the Department of the Air Force is now engaged in studies to determine the size, organization, and structural composition of the Reserve forces which will most effectively insure our national military security with the most economical expenditure of appropriated funds. When these studies have been completed we will present for consideration by the Congress our recommendations as to legislation which we believe necessary to authorize the proposed structure.

We believe that any determination of the relative strengths and composition of specified components of our Reserve forces in H. R. 1437 not only would serve no useful purpose, but also would prejudice acceptance of any other proposed structure which we might later submit to the Congress as a result of our current studies.

The CHAIRMAN. Thank you, General.

Mr. ELSTON. Mr. Chairman, my question has not been answered. If the Chairman will indulge me a moment, I would like to ask the general another question or two.

The CHAIRMAN. Yes. Go right ahead.

Mr. ELSTON. You point out, for example, that section 60 of the National Defense Act states that no change in allotment, branch, or arm of units or organizations wholly within a single State will be made without the approval of the Governor of the State concerned. The point I am making is that this legislation does not fix the number of units.

I agree that section 60 would preclude a change in the allotment once the allotment was made, but I think the point that is being made here is that this legislation does not fix any allotment so far as the National Guard Air Force is concerned. In other words, you don't indicate how many groups shall be alloted to the National Guard.

General QUESADA. We don't intend to.

Mr. ELSTON. You simply say 61 for the Reserve forces. Now, the way the act is drawn wouldn't that permit the Secretary of the Air Force to designate how many should be assigned to the National Guard and how many should be assigned to the Reserves, generally; and couldn't he say, for example, one unit or one group, in the National Guard and all the rest to the Reserves? I am not saying he would, but he could do it in view of the way this section is drawn, could he not?

General QUESADA. At the present time he couldn't because the units that are in existence could not be changed except under the provisions that I have cited.

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Secretary SYMINGTON. Mr. Elston, we could withdraw——

Mr. ELSTON. There is no law——

Secretary SYMINGTON. We could withdraw Federal recognition now if we didn't think they were up to standard.

Mr. ELSTON. That is another question, Mr. Secretary: Federal recognition. But at the present time have any National Guard units been fixed by law?

Secretary SYMINGTON. I don't think they have.

This, however—the way it is written—would give an organization with just over 5,000 officers, 35 groups, and an organization with 232,000 officers in the Reserve, how many groups?

General QUESADA. Twenty-seven.

Secretary SYMINGTON. Twenty-seven.

Mr. ELSTON. But none for the National Guard. This law does not fix any particular——

Secretary SYMINGTON. If the suggestion of yesterday was adopted with respect to the number of groups, giving 35 to the National Guard, we who have an interest in the development of the civilian components would then by law be forced to put 35 groups into 5,000-plus officers and 27 groups into 232,000-plus officers, plus a great many thousand more who would sign up if they thought there was any chance to get a flight.

Mr. ELSTON. Well, if the law is written that way it would do it, of course; but the way it is written now it wouldn't do it, would it?

Secretary SYMINGTON. Yes, sir, as I see it.

Mr. KILDAY. Will the gentleman yield?

Mr. ELSTON. Yes.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. If I remember correctly—I would like to have General Reckord's attention—when General Bradley was here, section 102 of the bill had a provision with reference to the allocation of National Guard units of the Army by the President, to which you objected.

General RECKORD. Yes, sir.

Mr. KILDAY. And by agreement that was eliminated.

General RECKORD. That is right.

Mr. KILDAY. My recollection is that at that time General Reckord took the position that even though the National Guard units of the Army were not assigned by law, but having been federally recognized in the various States, they could not be disturbed without the permission of the governor. Isn't that correct?

General RECKORD. Mr. Kilday——

Mr. KILDAY. Under section 60.

General RECKORD. Section 60 has a proviso to this effect——

Mr. KILDAY. We have been over that, General. That is the one where the units cannot be disturbed.

General RECKORD. The answer——

Mr. KILDAY. Now, the basic law of the Army National Guard is no more specific in the assignment of individual units than the proposal for the Air Force contained in this bill, is it?

General RECKORD. I don't quite get the point.

Mr. KILDAY. There is nothing in the law specifically assigning Army National Guard units to States.

General RECKORD. No, sir.

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Mr. KILDAY. But having been assigned, and having been federally recognized, they are regarded as being protected by section 60 of the National Defense Act and they cannot be withdrawn nor disturbed without the permission of the governor of the State.

General RECKORD. That is correct.

Mr. KILDAY. Now, the 27 air groups—the 26 which have been federally recognized, having been federally recognized after allocation to the State could not under section 60 of the National Defense Act be reallocated without the permission of the governor of the State within which the unit is located.

General RECKORD. That is correct at the present time.

Mr. KILDAY. So that the fear that the gentleman from Ohio has, that under a blanket authorization of 61 groups the National Guard might be given 1 and the Reserve 60 is not justified under the law, is it?

General RECKORD. That is not justified under the law.

The CHAIRMAN. And could not happen.

Mr. ELSTON. The point I am making is this: This act might be interpreted as a repeal or a modification of section 60 of the National Defense Act.

Mr. KILDAY. Does the gentleman yield to me further?

As I understood from the testimony of both the Secretary and General Quesada, they take the position that section 60 does protect these National Guard units.

Secretary SYMINGTON. That is right, sir.

Mr. KILDAY. And that in addition there is no purpose or intention on the part of the Department of Air to disturb these 26 units.

Now, I want to ask this: Would there be any objection on the part of the Department of the Air Force, in view of the position you have taken, and the interpretation of the law, to including in this bill a proviso to the effect that nothing contained in this bill shall be construed to confer upon the Department or the Secretary the power to federalize the existing National Guard groups?

Secretary SYMINGTON. We would be entirely satisfied with that.

Mr. KILDAY. Why doesn't that settle our problem?

Secretary SYMINGTON. We would be entirely satisfied with it.

The CHAIRMAN. Then we go one step further. There would be no harm in writing into the bill the 26 which have already been established.

Mr. KILDAY. A proviso as to existing units.

The CHAIRMAN. Yes.

Mr. KILDAY. That would leave it, then, so that whatever the recommendation of the Gray board is would have to be the subject of specific and special legislation before this committee.

The CHAIRMAN. That is all right.

Secretary SYMINGTON. Yes.

Now, Mr. Chairman, I would like to thank Mr. Kilday for the clarity with which he has put the point. We are not lawyers, any of us, here from the Air Force. His suggestion is entirely satisfactory to us.

But our point is, sir, as you can see by the figures we have given with respect to relative strength, there might come a time when we would want to put in more groups of a Reserve-type and there might come times when we would want to put in more groups of the National

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Guard type. When you come to a bill which is an authorization bill it doesn't seem essential to specify the differences between those two groups, because when the legislation will come up as a result of your investigation—that is the committee's—and our ad hoc committee, you can then decide what you think is the best way to handle it.

The CHAIRMAN. Then, your thought would be to put in the bill that nothing in here can be construed as a federalization of the guard, and leave out the number of units for both components.

Secretary SYMINGTON. Yes, sir.

Mr. KILDAY. That would serve the purpose of maintaining the status quo.

Secretary SYMINGTON. Yes, sir.

Mr. KILDAY. And not hold up the authorization of our Regular Air Force and our Army and National Guard of the Army.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. And it would also have the effect of making it positive in the language that we do have an Air Force composed of three component parts.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. The Regular, the National Guard, and the Reserve.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. From the language that the General just read, it is done by interpretation because there is nowhere in that law mention of the Air National Guard. You just do it under the authority of transferring.

Secretary SYMINGTON. That is all right, sir.

The CHAIRMAN. Now, General Reckord, what have you to say in regard to that? We are trying to work you all together here.

General RECKORD. The only thing I would like to say—and I don't want to be considered as doing anything but protecting our position because certain things have been said to me which I don't like, and more or less in a threatening manner—I think the committee in the light of this discussion should know what the facts are.

We are as much interested as any other group in the national defense. That comes first.

The reason we are trying to protect the Air National Guard is because we know we have given more for the dollars spent in the Air National Guard than any other group has given, dollar for dollar.

These figures which the Secretary has given you can be shot all to pieces. This statement of General Quesada's is like a sieve to me.

Mr. KILDAY. Mr. Chairman, let us not engage in incriminations. Let us try to get together.

The CHAIRMAN. Yes.

General, if this bill is so written that the Air Force shall consist of the Regular Air Force, Air National Guard, and Air Reserve, and that nothing in this bill can be construed to mean that it is the intent of Congress for federalization of the Air Guard, which has the effect of having everything in status quo—we will cross the Gray board report later—what objection would you have to that?

General RECKORD. We have no objection to that.

The CHAIRMAN. Mr. Whitney, do you desire to make any comment? I think we worked everything out here.

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Secretary WHITNEY. I believe, sir, I have nothing to add in view of everything that has been said.

Mr. TOWE. Mr. Chairman, I would like to ask Mr. Secretary Symington one question.

The CHAIRMAN. Go right ahead.

Mr. TOWE. In section 201 of this proposed legislation, beginning in the second sentence, it reads as follows: "The Air Force of the United States," and so forth, shall consist of this, and then these words are here, "as may be determined by the Secretary of the Air Force consistent with the numbers of personnel and aircraft hereinafter authorized."

Secretary SYMINGTON. Mr. Towe, what section is that, sir?

Mr. TOWE. Section 201.

Secretary SYMINGTON. Yes, sir.

Mr. TOWE. I assume we are going to leave in the authority which is stated in that sentence. When the Secretary was asked by the chairman whether he would agree to have the specific number of units included in the bill, he said "Yes." Then he added—and I want to be corrected on this if I have misinterpreted your additional remarks—that there had to be some leeway. And I assume that that is the reason for that provision in the bill.

Secretary SYMINGTON. Well, Mr. Towe, if we could we would like to have a bill that didn't limit what we wanted to do in the future, provided the committee approved it. This is an authorization bill. We would like to have it general.

Mr. TOWE. I understand.

Secretary SYMINGTON. For example, sir, we have more Air Reserve officers in your part of the country than we have Air National Guard in the total United States.

Mr. TOWE. That is right, but they are not organized.

Secretary SYMINGTON. That is right.

Mr. TOWE. They are not organized.

Seretary SYMINGTON. That is right, sir.

The CHAIRMAN. Now, Mr. Secretary, and General Reckord—

Secretary SYMINGTON. I beg your your pardon—excuse me, sir—they are organized. Nor am I counting the additional ones who would like to be in.

Mr. TOWE. My question hasn't been answered, Mr. Chairman.

The CHAIRMAN. Oh, pardon me. Can you answer the gentleman's question?

Secretary SYMINGTON. I am trying to answer it.

If this is an authorization bill, and with the definite proviso that we don't imply federalization, as Mr. Kilday mentioned, we would like to see in the authorization bill some leeway with respect to how the Reserve civilian components are set up.

Mr. TOWE. So that the authority you have under that provision would permit you, if it is going to be of any value, to change to some extent the set-up in the bill as to units?

Secretary SYMINGTON. Well, didn't we go over that in respect to the law and the position of the States? Mr. Elston made the point.

Mr. TOWE. Yes, we went over it. And that is why I am asking you the question. I don't quite understand why you need to have that

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authority, if we are going to fix the components in the bill. I would like you to tell us why, if you can.

Secretary SYMINGTON. I thought we weren't going to fix the components.

The CHAIRMAN. Now, let me see if I can understand everything——

Mr. TOWE. I understood a moment ago that you are going to include in the bill the units they now have.

The CHAIRMAN. Well, the law does that. Section 60 of the National Defense Act fixes it so that these having been established—these 27—cannot be taken away from the States except by the consent of the governor. Then, if we go one step further and say that nothing in this bill repeals that, that absolutely makes sure that the National Guard Air Force, as established today will remain unless the governors knock them loose.

Then you could go one step further and say that nothing in this bill shall be construed to be interpreted as a federalization of the National Guard.

Then you would be saying that the Air Force is composed of three component parts: The Regular United States Air Force—and I think it would be proper to say 70 groups there—the Air National Guard and the Air Reserve. Now, is that, General, satisfactory to you?

General RECKORD. That would be most satisfactory to us, Mr. Chairman.

The CHAIRMAN. Is that satisfactory to you, Mr. Secretary?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. General Vandenberg, that is satisfactory to you?

General VANDENBERG. Yes, sir.

The CHAIRMAN. Mr. Whitney?

Secretary WHITNEY. Yes, sir.

The CHAIRMAN. Now, is it satisfactory to the committee to have our staff, and the representatives of the Air Department and the General to sit down and write up this amendment? If so, then we will be ready to pass this bill and get through with it.

Now, I think this: It is highly important that we go to the floor as early as possible with some organization. Now, you are accomplishing this. You are putting in the statute definitely that the Air National Guard is a part. You are establishing it. You are establishing the Air Force Reserve as a part. You are establishing that the Regular United States Air Force shall consist of 70 groups. And all those things constitute the broad words "The Air Force of the United States."

Now, it is highly important that we try to get this bill before the appropriation bill comes in, because then it strengthens us in our fight for a 70 air group. Congress, having already authorized it in 1 month shouldn't repudiate it the next month by not making as much money available as needed.

Mr. KILDAY. Mr. Chairman, you left out one element.

The CHAIRMAN. All right.

Mr. KILDAY. We will continue in section 201 the present language "supplemented by 61 Air Force reserve"—with a small "r"—"groups"?

The CHAIRMAN. That is right.

Secretary SYMINGTON. Mr. Chairman——

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The CHAIRMAN. Sixty-one.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Then, that leaves to the Department—his hands are tied with 26 now——

Secretary SYMINGTON. Twenty-seven, sir.

The CHAIRMAN. Twenty-seven.

You are tied down with 27, fixed by section 60, which we will reaffirm in this law. It ought to be reaffirmed. Have you any objection to reaffirming it?

Secretary SYMINGTON. Well——

The CHAIRMAN. We are putting here that nothing can be construed to abrogate or repeal section 60 of the National Defense Act.

Secretary SYMINGTON. It is all right, sir.

The CHAIRMAN. It is all right?

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Now, General Evans, do you agree to this?

General EVANS. Generally, yes.

The CHAIRMAN. All right. That ends it. No need to debate it.

General EVANS. I want to qualify it, Mr. Chairman, I will take a page out of the book of our National Guard friends. I am assuming, of course, that it will not be all National Guard, that we will have our own share of it.

The CHAIRMAN. Well, if he has $73,000,000, as one member of this committee I am going to see that it is spent. There is no need to have the money and the Reserve on paper. They must do something about it.

General EVANS. We need much more than the $73,000,000.

The CHAIRMAN. Then you go to the Appropriations Committee and get that.

Secretary SYMINGTON. Mr. Chairman, there is one more point on 201, sir.

The CHAIRMAN. All right.

Secretary SYMINGTON. General McConnell, who is our expert on this whole subject, has a point or two.

General MCCONNELL. Mr. Chairman, in connection with the point about which Mr. Towe asked awhile ago, Mr. Towe said, referring to section 201, the wording:

> The Air Force of the United States is authorized to consist of the number of organizational units—

and so forth—

> as may be determined by the Secretary of the Air Force—

he was disturbed as to whether or not that would authorize the Secretary to make any changes in the specified number of 70 and 61.

That wording does not refer to any numbers as specified by 70 or 61 groups. It refers to the numbers of squadrons which you have to have in groups: To depot units, depot groups, air service groups, headquarters units, and headquarters squadrons, aircraft control and warning units, and installations of that type.

Mr. TOWE. You misunderstood me, sir. I was not disturbed about what you said I was disturbed about.

General MCCONNELL. Does that answer your question, sir?

Mr. TOWE. No.

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The CHAIRMAN. Now, Mr. Secretary——

Mr. JOHNSON. Mr. Chairman——

The CHAIRMAN. We are agreed on this.

Mr. JOHNSON. They are going to come back with a plan, then. That will mean they are going to ask for an amendment to this authorization law. When your commitee gets through mulling this all over——

The CHAIRMAN. No. Let everybody understand it. They will come in here with a proposal this way: The Air Force of the United States has three legs that it stands on——

Mr. JOHNSON. I understand that, Mr. Chairman.

The CHAIRMAN. All right.

Then they will put in there about section 60 of the National Defense Act. Then they will put in there that it can't be construed that we are federalizing the Air National Guard. That is all there will be in the proposal.

Mr. KILDAY. I think what the gentleman from California is referring to: If there is any proposal on the report of the Gray Board. Isn't that correct?

The CHAIRMAN. That is a separate proposition.

Mr. JOHNSON. Mr. Chairman——

The CHAIRMAN. And you will have a separate hearing on it.

Mr. JOHNSON. No: that isn't entirely the whole thing. They want to readjust this. And maybe they should. I can see that the Air National Guard is an entirely different problem than the National Guard—entirely different—and maybe they should be taken out of the National Guard. I think that, maybe now, because it grew out of the fact that they were supporting groups to the Army. That is how it was developed.

The CHAIRMAN. That is not the issue before us today.

Mr. JOHNSON. When this committee comes up with something there, it has to go in the statute. You can't sit over in the Pentagon and make a lot of agreements that warp all your statutes to pieces. You have nothing to build on. We are trying to get a structure on which to build.

The CHAIRMAN. That is what we are trying to do. We all agreed on section 201.

Now, as to the next section, there is no dispute about 502,000 men?

Secretary SYMINGTON. No, sir.

The CHAIRMAN. All right, sir.

Now, the thought runs through my mind whether we should break you down and say 75,000 officers, or whether we should leave it—like we fixed in the Army Department—for you to determine how many officers you need. Now, which do you want?

My thought is this, and I will give you the benefit of it: Of course, in the Navy law we have a provision by which we say how many officers there may be. But I don't think in the Army, in view of their different assignments, and in view of their composition, it would be wise to restrict them. The same thing applies to the Air Force. I don't think it would be wise to say you could only have 75,000 officers. Of course, if you have more officers than you are entitled to you would be criticized about it.

Now, you know how to formulate these things. Why wouldn't it be wise to say that your strength is composed of 502,000 officers and

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enlisted men and let you, from a military standpoint, determine how many officers you need?

Secretary SYMINGTON. Mr. Chairman, General Vandenberg would like General Edwards to comment on that.

The CHAIRMAN. All right.

General EDWARDS. I will say first that the 75,000 figure was very carefully worked out by studying the basic units which go altogether to make up the Air Force. It isn't so necessary to have the total officer figure of 75,000 officers and warrant officers as it is to have an established authority for Regular officers of 35,000.

The CHAIRMAN. All right.

General EDWARDS. That is the important authorization.

The CHAIRMAN. Then, put it 502,000 officers and enlisted men, of which 35,000 shall be Regulars.

General EDWARDS. Yes, sir.

The CHAIRMAN. I wouldn't break it down any further.

Mr. KILDAY. Mr. Chairman, on that point we have a very complicated question, I am afraid, General, under our promotion bill.

Of course, I understood your testimony here the other day that if you got the authorization of 35,000 it would not be the purpose of the Department to immediately upgrade but might reach it by 1960. But in legislating we must look to what could be done.

Now, of course, our promotion bill provides the percentages of grades by your authorized strength and not your actual strength.

General EDWARDS. That is right; yes, sir.

Mr. KILDAY. So, in that you differ from the Navy, because their promotion list is determined by the on-board strength and yours by the authorized strength.

General EDWARDS. Yes, sir; plus such temporary promotions that the act permits us to make from time to time.

Mr. KILDAY. Yes.

You differentiated between the 35,000 Regulars and the others. I am sure you had in mind the question of the promotions which can take place under the authorized strength.

The CHAIRMAN. Mr. Kilday, the full question is whether we shall break it down or whether we shall give them authority.

Mr. KILDAY. We must break it down or else we must go back and amend the Promotion Act. There is no other way we can handle it.

The CHAIRMAN. I don't see that if you said "of which number 35,000 shall be regulars," how that interferes.

Mr. KILDAY. Yes, but the promotions are based on the Regulars.

General EDWARDS. The current promotions in the Air Force, like in the Army, are governed by the authorized Regular officer strength of the department.

The CHAIRMAN. Well, do you want it broken down like it is in the bill?

General EDWARDS. That was our original thought.

The CHAIRMAN. All right, then it is different than the way we did it for the Army. Is that satisfactory?

General EDWARDS. I don't know how the Army did it.

The CHAIRMAN. Well, the Army didn't break it down.

General EDWARDS. We would like it broken down.

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The CHAIRMAN. You want yours to read a personnel strength of 502,000, which number shall include not to exceed 75,300 officers, including warrant officers, of which number 35,000 may be Regular Air Force officers and 4,800 may be Regular Air Force warrant officers, and 426,700 enlisted men.

General EDWARDS. That would be satisfactory.

Mr. KILDAY. Mr. Chairman, we are going too fast on this problem. It is much more important than I am afraid the chairman realizes.

The CHAIRMAN. All right.

Mr. KILDAY. What is your present Regular officer strength, since the division with the Army?

General EDWARDS. Twenty thousand four hundred, sir.

Mr. KILDAY. You are now going to 35,000?

General EDWARDS. Yes, sir.

Mr. KILDAY. Now, tell me roughly how many more colonels that would permit you to have than your present authorization, roughly?

General EDWARDS. It would permit us to have, eventually, in 10 years, when we got to that strength, 8 percent of 35,000, roughly.

Mr. KILDAY. Instead of 8 percent of 20,000?

General EDWARDS. Instead of 8 percent of 20,000.

Mr. KILDAY. It would be 2,800 against 1,600.

General EDWARDS. But what it would mean is this: It would merely transfer a Reserve for a civilian components colonel into a Regular colonel.

Mr. KILDAY. How are you going to do that?

General EDWARDS. Over a period of time. It would take time to do it.

Mr. KILDAY. But your integration law has expired.

General EDWARDS. We can't do that as to individuals, but the number.

Mr. KILDAY. I do want the committee to understand that when we raised the Regular authorized strength of the officer corps of the Air Force we automatically raised the numbers in each grade.

General EDWARDS. That are authorized; yes, sir.

Mr. KILDAY. Under our promotion law.

Mr. NORBLAD. Will the gentleman yield, please? Could I ask a question, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. NORBLAD. In other words, if this law is passed you could immediately, not on a 10-year basis, but under the law you could immediately increase your number of colonels and generals by, oh, say, half again as many without increasing the strength of your men?

General EDWARDS. That is right, I think we could, subject to the check of annual appropriations.

Mr. NORBLAD. That is right. But you wouldn't have to wait for any 10 years. You could do it overnight.

General EDWARDS. That is right, we could.

The CHAIRMAN. Then, the language in reference to the personnel strength is what you want, which is in the bill?

General EDWARDS. Yes, sir; we would prefer that.

The CHAIRMAN. That is active duty, you know.

General EDWARDS. Yes, sir.

Mr. JOHNSON. Could I ask one question there, just to supplement what Mr. Norblad said?

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The CHAIRMAN. Mr. Johnson.

Mr. JOHNSON. It means the promotion rate for permanent grades would be about twice as fast.

General EDWARDS. No; it wouldn't be any different because we don't intend or couldn't get the 35,000 Regular officers except over a period of 10 years. We don't have the sources available to us to get those Regular officers.

Mr. JOHNSON. In other words, you are only limited by that.

General EDWARDS. That is the real limitation; yes, sir.

Mr. JOHNSON. Well, I can't yet see how that is. It seems to me it would just double the rate of increase in promotions for the Regular officers.

Mr. NORBLAD. Now in the service.

Mr. JOHNSON. Instead of applying——

General EDWARDS. Well, administratively, it would be possible to do it. But we would have to defend that before the Appropriations Committee, and we wouldn't have a chance of getting it.

Mr. JOHNSON. Well, that may be true, but isn't this the net effect of it: Instead of applying it to about 75,000, the promotion system for the Regulars is applied to only 35,000?

General EDWARDS. That is right, for permanent promotions; yes, sir.

Mr. JOHNSON. You are pyramiding it on top of this great group of 502,000 men and officers.

General EDWARDS. That is right.

Mr. NORBLAD. Will the gentleman yield?

Mr. JOHNSON. Certainly.

Mr. NORBLAD. In other words, if you have 500 colonels, right now if this law were passed, you could immediately increase the number of colonels to 800 or 900 under the law.

General EDWARDS. Yes, sir; that is correct. However, we do not anticipate filling officer grades based on a percentage of authorized strength but intend rather to fill grades based on actual strength.

Mr. NORBLAD. I am just giving this figure as an example. How would it actually work out on colonels.

General EDWARDS. We have an authorization for 1,600 colonels now and if this law is passed the authorization would be increased to about 2,800.

Mr. NORBLAD. This ratio of increase would be the same as to all other officer grades?

General EDWARDS. Colonel and below, yes. This would not affect generals as there is a definite limitation placed on them by Public Law 381, Eigthieth Congress. The Army and Air Force combined may not have more than 357; currently we are authorized 150 of this number.

Mr. JOHNSON. Won't that have a damaging effect on the morale of the men that are in on temporary duty; that is, Reserve officers?

General EDWARDS. No, sir; because they are being promoted themselves.

Mr. JOHNSON. Well——

General EDWARDS. A fair share of our promotions, a very fair share of our promotions go to Reserve officers that are on active duty.

Mr. JOHNSON. This is not a reflection on anybody in the Air Force.

General EDWARDS. Yes, sir.

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Mr. JOHNSON. I just want to wind out what the facts are, General. I have great confidence in you personally. But pretty nearly every Reserve officer I have talked to—and they are around the captain and major grades—claim they are bypassed by members of the Regular Establishment.

General EDWARDS. I don't think that is correct.

Mr. JOHNSON. They keep talkingto me about it, and I just say I can't do anything about it. You shouldn't do something to destroy the morale of those 35,000 men that are coming in from civil life to help you out.

General EDWARDS. I would welcome giving you the facts on that.

The CHAIRMAN. Now, Mr. Clemente, any objections?

Mr. CLEMENTE. Yes. I want to try to pursue the same line of thought of Mr. Kilday, when he spoke about 8 percent colonels. Would that in any way afford an opportunity for a Reserve officer to become a colonel in the next 10 years, General?

General EDWARDS. Yes, sir. We have many Reserve officers who are on active duty today as colonels.

Mr. CLEMENTE. I don't mean now, but in the future.

General EDWARDS. Yes, sir. We just made——

Mr. CLEMENTE. The number of colonels is usually 1.7 to the general total strength; is that right?

General EWARDS. I didn't understand.

Mr. CLEMENTE. Isn't the number used by the Army 1.7 for colonels?

General EDWARDS. I have the figures on what the over-all percentage is in the Air Force.

Mr. CLEMENTE. Isn't that all used up now for colonels?

General EDWARDS. No. We just promoted 60 Reserve officers to the grade of colonel, in December.

Mr. CLEMENTE. How about now and the 10-year period that you are talking about?

General EDWARDS. That applies only to Regular officers. We were increased to this 35,000 figure by 1960.

Mr. CLEMENTE. That is all I wanted to know.

The CHAIRMAN. Now, General Edwards I wanto clear that up. Section 202 says:

> The Air Force of the United States is hereby authorized an active-duty personnel strength of 502,000, which number shall include not to exceed 75,300 officers.

Then you would leave out the 75,000. You would put in there 35,000 Regular Air Force officers, 4,800 Regular Air Force warrant officers, and 426,700 enlisted personnel.

General EDWARDS. Yes, sir.

The CHAIRMAN. Because you wouldn't want to put the figure 75,000, as this is the active-duty strength; is that correct now?

General EDWARDS. That is right, both Regular and Reserve active-duty strength.

The CHAIRMAN. Then there would be 35,000 Regular Air Force officers and 4,800 Regular Air Force warrant officers?

General EDWARDS. If you put the officers in and the warrant officers and the total strength, the balance necessarily would be enlisted.

The CHAIRMAN. That is right.

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General EDWARDS. But I do think it would make it clearer to spell it out.

The CHAIRMAN. All right.

General EDWARDS. All three categories.

Mr. KILDAY. If we don't keep the 75,000 figure in the bill the Air Corps conceivably could have 100,000, couldn't they? There would be no limitation?

General EDWARDS. That is right.

For instance, if there was only the 502,000 limitation, you could convert enlisted spaces into officer spaces.

The CHAIRMAN. This is active duty.

Mr. KILDAY. Yes; but the 75,000 is a brake on the Department.

The CHAIRMAN. No; this is active duty.

I think it ought to be left out. I think we ought to try to get it as close to the language of the Army——

General EDWARDS. It would give the Department more latitude, more leeway, if it were left in there.

The CHAIRMAN. Mr. Secretary, what have you to say in regard to the strength of the National Guard being fixed for personnel at not exceeding 100,000?

Secretary SYMINGTON. What is the strength of the National Guard today?

The CHAIRMAN. What is the strength, General?

General RECKORD. The authorized strength for this fiscal year, 41,000.

The CHAIRMAN. Forty-one thousand.

General RECKORD. We expect it to go to 56,000 within the next 2 years.

The CHAIRMAN. You see, we have done the same thing in the Army bill. We put the strength of the National Guard in the section dealing with the Army, and we put the strength of the Reserve in people. Now, why wouldn't it be in the same line of reasoning today—not exceeding 100,000? That is a latitude which you would never probably get to, because your National Guard and appropriations may not give you enough money. But they wouldn't have to come up, if the emergency arose, and have to have it changed. And the National Guard is such a part of your scheme of national defense that with an over-all ceiling of 100,000 it can't hurt the situation at all.

Secretary SYMINGTON. Well, Mr. Chairman, it is a pleasure this morning to agree with my good friend, General Reckord, on this problem.

The CHAIRMAN. Now, this is very important. Mr. Secretary, what have you to say in regard to putting in here for the Air Force Reserve a personnel strength of 235,000? Of course, you are never going to get it, but it is generous and there is no harm in it.

Secretary SYMINGTON. Fine, sir.

The CHAIRMAN. All right.

Now, any questions from the staff to clarify anything?

Mr. HARLOW. Well, sir, I believe they have in the draft of the bill proposed by the Air Force 256,100 officers for the Reserve, instead of 235,000.

The CHAIRMAN. Well, General Evans didn't want but 235,000 yesterday. If that is all they want, put 235,000——

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General EVANS. No, Mr. Chairman.

The CHAIRMAN. Put in 265,000 and let us have no debate about that.

General EVANS. We have more than that now, Mr. Chairman. We have 234,000 officers and we have 187,000 enlisted men.

The CHAIRMAN. You said yesterday 235,000.

General EVANS. I beg your pardon. That was officers.

The CHAIRMAN. That is what this is: Officers, 235,000.

Mr. BLANDFORD. It includes everybody.

The CHAIRMAN. Well, make it 400,000.

General EVANS. All right.

The CHAIRMAN. Now, does that get everything straightened out? All right, now, let us take section 203:

The Air Force of the United States is hereby authorized 24,000 serviceable aircraft to fulfill the requirements for aircraft necessary to carry out the purposes of the act, which aircraft shall be so allocated so as to provide and maintain 70 Regular Air Force groups and 22 separate Regular Air Force squadrons in the United States Air Force, 35 Air National Guard groups in the Air National Guard of the United States and 27 Air Force Reserve groups * * *.

Now, do you want those figures in there now?

General VANDENBERG. No.

The CHAIRMAN. You don't want those figures in there because you have 27 and that 27 will have to come out of the 24,000. They wouldn't have to go in there, would they, General?

General VANDENBERG. No, sir.

The CHAIRMAN. General Reckord?

General RECKORD. Mr. Chairman, the only point we made on this section was the fact that there is a total number of planes authorized. I asked the question as to whether that was for the Regular Establishment only, or whether or not it included the National Guard and the Reserve. If that point is clear, that is all we want.

The CHAIRMAN. Well——

Secretary SYMINGTON. I could answer that, sir.

The CHAIRMAN. All right.

Secretary SYMINGTON. It does include the planes for the National Guard and the Reserve.

The CHAIRMAN. That is right; the 24,000 includes everybody.

Mr. KILDAY. How about your air-frame pounds in there?

Secretary SYMINGTON. We asked for that at the last hearing.

Mr. KILDAY. This doesn't include it. What is your total?

Secretary SYMINGTON. 225,000 tons, which is 450,000,000 pounds of airplane weight. We would like to include that in there, Mr. Chairman. I mentioned that to you last time, sir.

The CHAIRMAN. You want to put that in?

Secretary SYMINGTON. Yes, sir; if we could we would like that.

The CHAIRMAN. All right, put both in—24,000 and the poundage; is that correct?

Secretary SYMINGTON. That is correct; yes, sir.

The CHAIRMAN. All right.

Now, I suggest this, members of the committee: I suggest that our staff—we are fortunte to have a very able staff—and that General Vandenberg and that General Reckord, and any other ones in the Department who are concerned, sit down and fix this bill up and have it ready for the committee in the morning because we want to vote on it tomorrow——

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Mr. GAVIN. Mr. Chairman, could I ask a question?

The CHAIRMAN. Wait one minute. Have that ready and we will vote on it Monday morning.

And immediately after we vote on this bill we want to commence a hearing on the bill introduced yesterday by Mr. Short on behalf of the committee to establish the Office of Under Secretary in the Department of National Defense.

Now, we have to begin to make time because we have a heap of work piling up on us. So you gentlemen try to get everything ready for Monday morning, to vote on this bill.

Now, Mr. Gavin.

Mr. GAVIN. I was wondering: We spent hours here in a discussion of this problem and here is a National Guardman that says:

High-level group to restudy troop basis. A new special group representing the National Guard, Organized Reserve, the Regular Army, and the public generally has been created by the Army Secretary Kenneth F. Royall to re-examine the Guard-Reserve postwar troop basis.

Now, here it states:

The announced reason for establishing the committee was to determine whether the size and distribution of the Army civilian components are adequate and practical in the light of the present national defense needs.

Now, if this group is going to study this question—we are studying it here—I just wondered what you are going to do when this report comes in?

The CHAIRMAN. Well, the committee that the Secretary appointed to work out this proposition with the National Guard has had its work done here. It has already been worked out here in a half hour, for which they were going to take 6 weeks to work out. We got them all together. We can get these others together. We will just sit down here and cut out all the frills and furbelows.

We will take a recess until Monday morning. And have this ready now. We are going to vote Monday morning.

Secretary SYMINGTON. Thank you, sir.

(Whereupon, at 11:51 a. m., the committee adjourned.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Tuesday, February 8, 1949.

(The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.)

The CHAIRMAN. Let the committee come to order.

I want to ask the clerk now, with reference to the hearings, have the Department witnesses all finished correcting the hearings and are all of them back?

Mr. HARPER. I suggest Mr. Blandford——

Mr. BLANDFORD. Yes; we have all of the testimony back and as soon as today's testimony is in my hands and corrected it will be able to go to the printers, probably tomorrow afternoon.

The CHAIRMAN. Then, we will be able to have the hearings on the floor when the bill is considered?

Mr. BLANDFORD. If we can get the hearings back by the day after: yes, sir.

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The CHAIRMAN. Of course, under the rules, members of the committee, no bill can be reported out until the hearings have been available for 3 days.

Now, does the committee want to insist on that? If so, we cannot vote on this bill today and we will have to wait until the hearings come in.

Mr. KILDAY. Mr. Chairman, this bill was heard by the whole committee. I do not believe that the rule should be adhered to in a case of this kind too strongly, where it was not heard by a subcommittee by but the full committee.

The CHAIRMAN. What do you say, Mr. Cole?

Mr. COLE. As a matter of fact, it was my recollection—in fact, I know the purpose of the rule was that it related only to reports from subcommittees.

The CHAIRMAN. All right.

Mr. COLE. And not to measures heard by the full committee.

Mr. KILDAY. I think that is the intent of it.

The CHAIRMAN. All right.

Now, members of the committee, laying before you is an amendment that has been submitted as a committee print. On Saturday the Policy Committee——

Mr. COLE. Mr. Chairman, before you leave that subject and so long as it has arisen here for the first time, in order that we may have a clear understanding on this point, let me read the rule. It is No. 9 and it says:

> Reports and recommendations of a subcommittee shall not be considered by the full committee until after the intervention of three calendar days from the time the report is submitted and printed hearings thereon are available to the members, except that this rule may be waived by a two-thirds vote of a quorum of the committee.

The CHAIRMAN. Then that does not apply.

Mr. COLE. No.

The CHAIRMAN. I am glad to konw that.

Now, as I started to remark, there is a committee print in the nature of a substitute to the language of the bill H. R. 1437. On Saturday the Policy Committee—Mr. Kilday, Mr. Arends, Mr. Cole, Mr. Short, and myself, had a meeting. Mr. Brooks was unavoidably out of the city, and so was Mr. Durham. We had a discussion with the Department heads—Mr. Secretary Symington and General Dahlquist—with reference to what was disturbing some of us. We didn't think the facts justified 40,000 Regular officers.

After considering it and talking around the table we decided the facts did justify a Regular Establishment of 33,500 officers. And we did think that the facts warranted an increase of warrant officers to 9,000 from 40-some-odd hundred. And with reference to the Air Force we thought the number of officers in their Regular Establishment should be fixed at 27,500. So we corrected the bill along those lines and it is now before the committee for consideration.

Therefore, I am offering to move to strike out all after the enacting clause of H. R. 1437 and offer as an amendment the committee print No. 2 which is now before you.

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Now, Mr. Blandford, will you proceed to read the committee print for consideration? And it is open to amendment by any member of the committee.

Mr. BLANDFORD. All right, sir——

Mr. COLE. Mr. Chairman, I think it might be well for you to explain how the figures of 33,500 for the Army and 27,500 for the Air Force was determined.

The CHAIRMAN. All right.

We arrived at it this way—we didn't pick it out of the air, but we tried to be mathematically certain—under the proposed bill the strength of the Army is fixed at 837,000. That is an over-all ceiling. Today they have 682,000 men in the service, approximately. The budget has reduced that where they will have an Army on active duty of 677,000.

The Army calculates that at least 10 percent should be officers, so that would create an officer strength for the Regular Army—all bear in mind I am talking about the Regulars now—sixty-seven thousand-and-some-odd-hundred Regular officers.

Mr. COLE. No; active-duty officers.

The CHAIRMAN. Active-duty officers.

Their plan is to have one-half of their officer strength coming from Reserve and one-half from the Regulars. So we figured, if that be their method, then 33,500 would be the number of Regular officers. In that way we arrived at the figures.

Mr. KILDAY. Of course, that becomes important because of the promotion bill. The distribution in rank is based on authorized strength, rather than actual strength.

The CHAIRMAN. That is right. And I am happy to say that the departments, while they may not exactly like it, were willing to go along. Is that correct, Mr. Secretary Symington?

Secretary SYMINGTON. Yes, sir.

Mr. KILDAY. I am in the same position, Mr. Chairman. I don't like it, but I will go along with it.

The CHAIRMAN. Is that correct, General Dahlquist?

General DALHQUIST. That is correct.

Mr. BROOKS. That is for the Air, since you asked Mr. Symington?

The CHAIRMAN. For the Air we reach the same kind of basis. We probably might have been a little bit more generous with the Air because they wanted 35,000 and we reached a figure of 27,500, but we tried to reach it along that same kind of basis.

Now, I want to get this from you two gentlemen: When you go to the Senate are you supporting this bill or are you trying to rewrite the bill on a different figure? I do that for this reason: Oftentimes this committee has worked very hard in the past and then when they would go over to the Senate they would start the old fight over again. Now where do we stand? Are you going to support this bill or are you going to try to write a new bill?

What do you say, Mr. Symington?

Secretary SYMINGTON. We are going to support this bill, sir.

The CHAIRMAN. General, what do you say?

General DAHLQUIST. We will support it.

The CHAIRMAN. That winds it up.

Now read the bill.

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Mr. BLANDFORD (reading):

A BILL To authorize the composition of the Army of the United States and the Air Force of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. That this Act may be cited as the "Army and Air Force Act of 1949."

DECLARATION OF POLICY

SEC. 2. In enacting this legislation, it is the intent of Congress to provide an Army of the United States and an Air Force of the United States capable, in conjunction with the other armed services, of preserving the peace, security, and providing for the defense of the United States, its Territories, possessions, and occupied areas wherever located, of supporting the national policies of implementing the national objectives, and of overcoming any nations responsible for aggressive acts imperiling the peace and security of the United States.

The CHAIRMAN. One minute now.

Any objection to the preamble or the objective of the bill?

Mr. JOHNSON. Mr. Chairman, could I ask a question?

The CHAIRMAN. Yes.

Mr. JOHNSON. Did you consider whether or not it would be advisable to write two separate bills, so that in the event of amendment you just amend the particular bill concerned?

The CHAIRMAN. Well, the Department desires to have it written as one bill, with the two titles.

Secretary SYMINGTON. Is it all right if we sit up here? We can't hear very well.

The CHAIRMAN. Yes. General, you come up here with the Secretary, and you gentlemen come around to the table.

Now, title I, for the Army.

Mr. BLANDFORD (reading):

TITLE I—ARMY

AUTHORIZED COMPOSITION

SEC. 101. The organized peace establishment of the Army of the United States, including the Regular Army, the National Guard of the United States, and the Organized Reserve Corps, shall include all of those divisions and other military organizations, with their installations, and supporting and auxiliary elements, including combat, training, administrative, and logistic, and all personnel, including those not assigned to units, necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

The CHAIRMAN. Now——

Mr. HARLOW. Mr. Chairman.

Mr. CHAIRMAN. Mr. Harlow.

Mr. HARLOW. Mr. Chairman, in line 12 there, after the words "United States," there should be inserted the terms "the National Guard while in the service of the United States," to make this section conform to the National Defense Act and also to section 201 of this bill relating to the Air Force.

The CHAIRMAN. Let us see. Well, this is something that was left out.

Mr. HARLOW. Inadvertently omitted from the bill.

The CHAIRMAN. The organized peace establishment of the Army of the United States, including the Regular Army, the National

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Guard of the United States, and what other branch of the National Guard?

Mr. HARLOW. The National Guard while in the service of the United States.

The CHAIRMAN. All right, without objection, then, that will be put in.

Any comment with reference to section 101? If not, read section 102.

Mr. BLANDFORD (reading):

AUTHORIZED PERSONNEL STRENGTH

SEC. 102. (a) There is hereby authorized for the Army of the United States an active duty personnel strength of eight hundred and thirty-seven thousand officers, warrant officers, and enlisted persons, exclusive of such one-year enlistees as are or may be authorized by law, officer candidates, personnel of the reserve components on active duty for training purposes only, persons paid under the appropriations for the National Guard and Organized Reserve Corps, and personnel and units of the reserve components ordered to active duty in an emergency hereafter declared.

(b) Of the active duty personnel strength authorized in subsection (a) of this section, not to exceed thirty-three thousand five hundred may be active list commissioned officers of the Regular Army, exclusive of the numbers authorized by law for the Army Nurse Corps and the Women's Medical Specialist Corps, and nine thousand may be active list warrant officers of the Regular Army. Section 501 of the Officer Personnel Act of 1947 (61 Stat. 883) is hereby amended by striking out the words "fifty-one thousand" and inserting in lieu thereof the word "thirty-three thousand five hundred"; and hereafter the active list commissioned officer strength authorized in said section shall apply to the Regular Army, exclusive of the United States Air Force.

(c) There is hereby authorized for the National Guard and the National Guard of the United States a personnel strength, to be distributed among the several States, Territories, and the District of Columbia, of seven hundred and fifty thousand officers, warrant officers, and enlisted persons, excluding those serving on active duty in the Army of the United States who are counted within the personnel strength of eight hundred and thirty-seven thousand authorized in subsection (a) of this section.

(d) There is hereby authorized for the Organized Reserve Corps a personnel strength of nine hundred and eighty thousand officers, warrant officers, and enlisted persons, excluding those serving on active duty in the Army of the United States who are counted within the personnel strength of eight hundred and thirty-seven thousand authorized in subsection (a) of this section. Persons may be appointed as warrant officers in the Officers Reserve Corps under such regulations and in such numbers as the Secretary of the Army may prescribe.

The CHAIRMAN. Any amendments to section 102 from any members of the committee?

Mr. COLE. Mr. Chairman, let me ask for information if there is any provision in law with respect to the number of officers in the National Guard?

The CHAIRMAN. General, can you answer Mr. Cole's question?

General RECKORD. No, Mr. Cole, there is not. It is governed by table of organization and authorization given through the Bureau to the several States by the Department.

Mr. COLE. Was there any feeling in the National Guard that there should be some statutory provision with respect to the number of officers out of the total authorized National Guard strength?

General RECKORD. I think not, Mr. Cole.

The CHAIRMAN. All right.

Now, if there is no further question, we will read section 103.

Mr. HARLOW. Mr. Chairman.

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The CHAIRMAN. Mr. Harlow.

Mr. HARLOW. There is a correction of language in the bill, sir. On page 3, line 15, the word "word" should be "words."

The CHAIRMAN. Well, correct it.

All right, anything further from the staff?

Mr. BLANDFORD. No, sir.

The CHAIRMAN. Section 103 then.

Mr. BLANDFORD (reading):

MATERIALS AND PROCUREMENT AUTHORIZATION

SEC. 103. The Secretary of the Army is hereby authorized to procure the materials and facilities, including guided missiles, necessary for the maintenance and support of the Army of the United States and its organizations and installations, including but not limited to (1) the supply of modern standard items of equipment; (2) the replacement of equipment as it becomes obsolete or unserviceable; (3) the provision of necessary spares and spare parts; and (4) the maintenance of such reserves of supplies and equipment as are necesary for the Army to perform it mission.

The CHAIRMAN. Any comments on section 103? If not——

Mr. COLE. Mr. Chairman, it is not very important, but this authorizes the Secretary to buy materials and facilities for the Army and its organizations and installations. However, in section 101 the bill states:

The organized peace establishment of the Army, its military organizations, installations, and supporting and auxiliary elements.

I wondered if that same expression might not properly be included in the authority of the Secretary to procure.

The CHAIRMAN. Can the staff answer the question?

Mr. HARLOW. I would believe, sir, that the expression "its organizations" would be adequate, but that it would definitely be sounder to have used the same language as is in the original section.

Mr. COLE. Well, it might avoid some conflict on interpretation by somebody later on if we clarified it.

The CHAIRMAN. All right; without objection, the staff will fix that up.

Read the next, Mr. Blandford, section 104.

Mr. BLANDFORD. (reading):

RESEARCH AND DEVELOPMENT AUTHORIZATION

SEC. 104. The Secretary of the Army is hereby authorized to conduct, engage, and participate in research and development programs related to activities of the Army of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effectuate such programs.

The CHAIRMAN. Any suggestions? If not, read the next one.

Mr. BLANDFORD (reading):

APPROPRIATION AUTHORIZATION

SEC. 105. There are hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums of moneys as may be necessary to carry out the purposes of this title. Except as may otherwise be provided in the appropriation act concerned, (1) any moneys appropriated to carry out the purposes of section 103 of this act shall remain available for obligating during the fiscal year for which appropriated and for the succeeding fiscal year, and shall remain available for expenditure for a

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total of 5 years; and (2) any moneys appropriated to carry out the purposes of section 104 of this act shall remain available until expended.

Mr. SHORT. In line 14 there, you left in the words "for obligation", but you cut it out, didn't you, in line 18? That was the question we brought up Saturday.

Mr. HARLOW. Mr. Short, that was in connection with the comparable section for the Air Force.

Mr. BLANDFORD. The point is the same.

Mr. SHORT. You decided to leave that in?

Mr. BLANDFORD. No, sir; the Air Force deleted it because it is their understanding that the words "remain available until expended" covers everything.

Mr. SHORT. I see.

Mr. BLANDFORD. Now, it they leave the words "for obligation" insofar as the first part of section 105 is concerned, it may raise the inference that "for obligation" does not allow them to transfer their funds once they have been committed.

Mr. SHORT. Yes.

Mr. BLANDFORD. So there is definitely a point.

General Edwards might want to comment on that. You may have a definite point.

The CHAIRMAN. Any comment with reference——

Mr. SHORT. How about that, General Edwards?

General EDWARDS. Sir?

Mr. BLANDFORD. I am sorry, that would be General Dahlquist.

The CHAIRMAN. Yes.

General DAHLQUIST. I am sorry, I didn't get the implication of it.

The CHAIRMAN. State it again, Mr. Short——

General DAHLQUIST. Will you state it again?

Mr. SHORT. On page 5, line 14, you left in the words "available for obligation", but if I recall right we amended it in line 18, particularly as it applies to the Air Force. But it holds true for both the Army and the Air Force.

General DAHLQUIST. Saturday there was a discussion whether or not the words "for obligation" could not be deleted.

Mr. SHORT. That is right. And Mr. Blandford was to confer with the counsel of the Department of the Air Force.

General DAHLQUIST. Yes.

Mr. BLANDFORD. The decision was that the elimination of the words "for obligation" was perfectly sound.

General DAHLQUIST. And the same thing holds on our section. That is, the two words "for obligation" might well be deleted.

The CHAIRMAN. All right, then, shall remain available——

Mr. SHORT. Until expended.

The CHAIRMAN. Shall remain available for expenditure for a total of 5 years. All you do is strike out the word "obligation" there.

Mr. COLE. No, Mr. Chairman. The point as I understand it is it permits the Army to obligate moneys that might be obligated for one fiscal year during that year or a suceeding year, but the expenditures of those obligations in either of the 2 years must be made within a period of 5 years from the time it is appropriated.

Mr. BLANDFORD. Yes, sir; that is correct.

Mr. SHORT. I think Colonel Lancefield can clear up the point.

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Colonel LANCEFIELD. Mr. Chairman, Mr. Cole's statement is the way we understand the effect of the section. That is, for the general procurement of equipment, the money may be obligated during the year for which it is appropriated and the following year. And expenditures as against those obligations, but not new expenditures, may be made over a total of 5 years for that purpose.

The CHAIRMAN. That carries out, then, what is put in the appropriation bill as a contract authorization.

Colonel LANCEFIELD. That is right.

The CHAIRMAN. That is right. The obligation means a contract authorization.

Colonel LANCEFIELD. Yes, sir.

The CHAIRMAN. And it is made in the fiscal year for which it is appropriated. And when the article has been finished, then the appropriation is made.

Colonel LANCEFIELD. Yes, sir.

Mr. BLANDFORD. Mr. Chairman, there is one point that I would like to ask Colonel Lancefield about, however, and that is after your funds have once been obligated under this language can you transfer your obligations?

The CHAIRMAN. Oh, no.

Colonel LANCEFIELD. With respect to those authorized under section 103, which is for equipment and facilities, it is my understanding it would not be subject thereafter to transfer.

Mr. BLANDFORD. But under the other language: "Shall remain available until expended", it would permit you to transfer your obligation.

Colonel LANCEFIELD. Yes, sir, On research activities there would be the possibility of transferring those into other activities of the same type.

The CHAIRMAN. All right.

Go ahead——

Mr. COLE. Mr. Chairman.

The CHAIRMAN. Mr. Cole.

Mr. COLE. I would like to hear some justification for your being allowed to spread expenditures on research and development over a period greater than 5 years. Why shouldn't that 5-year limitation apply to research expenditures as well as procurement of anything else? You certainly ought to be able to lay out your research program and have it completed within a period of 5 years.

Colonel LANCEFIELD. Mr. Chairman, that question was included in those which you submitted to the Department of the Army and the Air Force for reply and I should like to invite attention to the matters that were set forth therein.

The general basis of it is that some of these research and development projects are long-range matters and they have to continue for quite a while. We were asked and did submit examples of several types of research which would be a long continuation. So far as the funds themselves are concerned I anticipate that each year the appropriations committee will carefully go into the status of the projects that are underway and will also consider the available balance of both obligated and unobligated toward carrying those out.

Mr. JOHNSON. Do you have some that are over 5 years, in anticipated duration?

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Colonel LANCEFIELD. If I may refer to this answer?

The majority of them are long-range in nature and upon initiation it may be, sometime, that completion will require some 3 years. Subsequent estimates may extend the time by several more years. The results of research are somewhat unpredictable and they are hard to schedule on a time basis. But civilian contractors, particularly State educational and nonprofit institutions, are reluctant to accept long-range projects and to retain a highly qualified personnel when there exists the possibility of a cancellation prior to completion for lack of sufficient funds to carry the thing out.

We had in here certain types of projects. I will have to refer to this thing.

Mr. COLE. Mr. Chairman, I suggest you insert in the record at this point the answer which has been submitted to the question which you raised.

The CHAIRMAN. All right.

Mr. COLE. By the Department.

The CHAIRMAN. Put that in.

(The matter referred to is as follows:)

Question. For how long may funds be obligated, and for how long may funds be expended under the provisions of section 301—5 years, 6 years, or 7 years? Explain fully.

Answer. Under the provisions of section 301 as originally worded procurement funds are available for both obligation and expenditure for a period of 5 years; and research and development funds are available for both purposes until expended. In the revised section an appropriation authorization submitted by the Department of the Army (now labelled Sec. 105), procurement funds are available for obligation for 2 years and for expenditure for 5 years. Research and development funds remain "no year money" as in the original version of the bill.

Question. Explain the need for removing any limit on the length of time research funds will be available, pursuant to section 301.

Answer. The majority of research and development projects are long range in nature. Upon initiation of a project it may be estimated that completion will require 3 years. Subsequent estimates may extend the period by several more years. Thus results are unpredictable and do not lend themselves to a predetermined time schedule. For this reason any arbitrary time limit for expenditure of appropriations may jeopardize a worth-while project whose continuation depends on a subsequent year's appropriation. Civilian contractors are reluctant to accept long range projects, and hire highly qualified personnel, when there exists the posibility of cancellation prior to completion for lack of a new appropriation.

Mr. KELDAY. Mr. Chairman, in connection with this I think we ought to have the record show that we have considered the constitutional limitation on appropriations for the Army. It is a limitation which applies to the Army, that funds shall not be appropriated for a period in excess of 2 years. The Navy is not bound by it and I understand that the Air Force takes the position that they are probably not bound by it. There is not court decision anywhere to the effect that you can appropriate funds in excess of 2 years, but there is a decision by the Judge Advocate General of the Army and the Comptroller General of the United States that it does not apply to equipment, munitions and facilities and things of that kind. But I think when we seek to pass a bill here that funds for the Army can remain available for 5 years, we should have it understood that we have considered the constitutional limitation.

The CHAIRMAN. You have that in the record?

Mr. BLANDFORD. Yes, sir; it is in the record now.

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The CHAIRMAN. It is in the record. And, of course, that question will be raised in debate and we will explain the ruling of the Comptroller General and everyone.

Mr. Symington, do you want to say anything?

Secretary SYMINGTON. No, Mr. Chairman, I think Mr. Kilday covered my point, sir.

The CHAIRMAN. All right.

Secretary SYMINGTON. It is true that our lawyers and the Attorney General have both given decisions that any constitutional aspect does not apply to the Air Force.

The CHAIRMAN. Good.

Mr. BROOKS. Mr. Secretary, is that the reason you think that the term "for obligation" was put in there, because of the thought that there is some sort of constitutional inhibition against long-range appropriations?

Secretary SYMINGTON. I don't know that, sir. I would say from the standpoint of good business in my opinion it should be taken out of the Army bill, just like it should not be included in the Air Force bill.

The CHAIRMAN. When the debate takes place on the bill——

Mr. DURHAM. Aren't those funds considered as spent with your letter of intent? The research goes on for 2 or 3 or 4 years, but it is considered as spent by the finance officers of the Army on the letter of intent.

The CHAIRMAN. They are not spent——

Mr. DURHAM. When you once obligate it and there is a letter of intent for the obligation, isn't that charged against you?

Colonel LANCEFIELD. I don't know that I understood Mr. Durham's question.

Mr. DURHAM. Well, the question is: When you obligate the funds and give a letter of intent, isn't that considered as spent?

Colonel LANCEFIELD. That money is then considered as obligated, when we enter into a contractual arrangement with the supplier or the builder. We do not desire or need, except for research projects——

Mr. DURHAM. You can't break that contract because the Supreme Court has ruled on that in the Post Office Department. Once a letter of intent has been given, you are obligated and you are compelled to carry out your contract.

Colonel LANCEFIELD. Yes, sir.

As to the other matter, we do not feel that we need the authority to obligate it beyond the year in which it has become appropriated and the succeeding fiscal year.

The CHAIRMAN. Well, when that question arises on the floor, we have able constitutional lawyers and they can properly answer it. We cornfield lawyers will take care of the other sections of the bill.

Now read the Air Force section.

Mr. BLANDFORD (reading):

TITLE II—AIR FORCE

THE AIR FORCE OF THE UNITED STATES

SEC. 201. (a) The Air Force of the United States shall consist of the United States Air Force (the Regular Air Force), the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the United States Air Force Reserve; and shall include persons inducted, enlisted, or appointed without specification of component into the Air Force of the United

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States; and shall further include all of those Air units and other Air organizations, with their installations and supporting and auxiliary combat, training, administrative, and logistic elements and all personnel, including those not assigned to units, necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

The CHAIRMAN. Any comments on that section? I want to congratulate the committee on at last being able to put language in here so we will know exactly what constitutes the Air Force.

Read the next section.

Mr. BLANDFORD (reading):

AUTHORIZED COMPOSITION

(b) The Air Force of the United States shall have an authorized strength of 70 United States Air Force groups, 22 separate United States Air Force squadrons, and 61 Air Force Reserve groups, together with necessary supporting and auxiliary United States Air Force and Reserve units.

The CHAIRMAN. Any comments? If not, read the next section.

Mr. BLANDFORD (reading):

AUTHORIZED PERSONNEL STRENGTH

SEC. 202. (a) There is hereby authorized for the Air Force of the United States an active-duty personnel strength of 502,000 officers, warrant officers, and enlisted persons, exclusive of such 1-year enlistees as are or may be authorized by law, officer candidates, aviation cadets, and personnel of the Reserve components on active duty for training purposes only, persons paid under the appropriations for the Air National Guard and United States Air Force Reserve, and personnel and units of the Reserve components ordered to active duty in an emergency hereafter declared.

(b) Of the active-duty personnel strength authorized in subsection (a) of this section, not to exceed 27,500 may be active-list commissioned officers of the United States Air Force and 4,800 may be active-list warrant officers of the United States Air Force.

(c) There is hereby authorized for the Air National Guard and the Air National Guard of the United States a personnel strength, to be distributed among the several States, Territories, Puerto Rico, and the District of Columbia, of 100,000 officers, warrant officers, and enlisted persons, including those members of the Air National Guard of the United States serving on active duty in the Air Force of the United States who are not counted within the personnel strength of 502,000 authorized in subsection (a) of this section.

Mr. HARLOW. Mr. Chairman.

The CHAIRMAN. Mr. Harlow.

Mr. HARLOW. I would like to raise a question on line 14, page 7. The words "Puerto Rico" appear there. The term "Puerto Rico" is not used in the corresponding section, which is identical except in respect of numbers, for the Army. They use the word "Territories" which is defined in the National Defense Act to include "Hawaii, Alaska, Puerto Rico, Canal Zone, the militia of the Canal Zone," and so forth.

I would suggest either that the committee add the words "Puerto Rico" in the Army section or withdraw it here, and preferably withdraw it from the Air Force section.

Mr. SHORT. It is superfluous.

The CHAIRMAN. Well——

Mr. COLE. In some respects Puerto Rico is not a Territory.

Now, if the definition in law of a Territory includes the Panama Canal Zone and Puerto Rico, then it is proper to leave it out.

Mr. HARLOW. Yes, sir; the law is here and states specifically this——

The CHAIRMAN. That it is a Territory.

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Mr. HARLOW. That "the word 'Territory' as used in this act," which is the National Defense Act, "and in all laws relating to the land militia and National Guard shall include and apply to Hawaii, Alaska, Puerto Rico, and the Canal Zone."

The CHAIRMAN. Then you can take it out.

Mr. SHORT. Take it out.

The CHAIRMAN. Strike out "Puerto Rico."

All right. If there are no other comments——

Mr. COLE. No; I don't think so, Mr. Chairman.

That expression in the Defense Act specifically relates to the land militia and National Guard. This section doesn't relate to land militia or the National Guard. It relates to something totally different than what was referred to in that section. That is my opinion.

Secretary SYMINGTON. Mr. Chairman, whatever the committee decides to use on this is all right with us, but we have an Air National Guard unit in Puerto Rico. If there would be any repercussions about that, we want to present this to the committee so you will understand it.

Mr. COLE. Leave it in here. It may be inconsistent, but it won't do any harm.

The CHAIRMAN. Without objection, that section is agreed to.

Now read section 203.

Mr. BLANDFORD. I have another subsection, which is (d).

The CHAIRMAN. All right.

Mr. BLANDFORD (reading):

(d) There is hereby authorized for the United States Air Force Reserve a personnel strength of 500,000 officers, warrant officers, and enlisted persons, including those members of the United States Air Force Reserve on active duty in the Air Force of the United States who are not counted within the personnel strength of the 502,000 authorized in subsection (a) of this section. Persons may be appointed as warrant officers in the United States Air Force Reserve under such regulations and in such numbers as the Secretary of the Air Force may prescribe.

The CHAIRMAN. Any comments on section 202? If not, read the next section.

Mr. BLANDFORD (reading):

AIRCRAFT AUTHORIZATION

SEC. 203. The Air Force of the United States is hereby authorized 24,000 serviceable aircraft or 225,000 airframe tons aggregate of serviceable aircraft, whichever amount the Secretary of the Air Force may determine is more appropriate to fulfill the requirements of the Air Force of the United States for aircraft necessary to carry out the purposes of this act: *Provided*, That guided missiles shall not be included within the number of aircraft or airframe tons herein authorized.

The CHAIRMAN. Without objection, read section 204.

Mr. BLANDFORD (reading):

PROCUREMENT AUTHORIZATION

SEC. 204. The Secretary of the Air Force is authorized to procure (1) 5,200 aircraft or 42,500 airframe tons annually, whichever amount the Secretary of the Air Force may determine is more appropriate, to provide the number of aircraft or airframe tons authorized by section 203 and to replace such aircraft as he may determine to be unserviceable or obsolete, (2) guided missiles, and (3) spares, spare parts, equipment, and facilities necessary for the maintenance and operation of aircraft and guided missiles herein authorized.

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Mr. SHORT. Mr. Secretary, that is elastic enough for you to keep up with progress and development?

Secretary SYMINGTON. Yes, Mr. Short, that is, sir.

Mr. SHORT. It must necessarily be so, too?

Secretary SYMINGTON. I agree with you.

Mr. SHORT. I mean, airplanes become obsolete, so in fact it must be elastic.

Secretary SYMINGTON. We agree to that.

The CHAIRMAN. Read section 205.

Mr. BLANDFORD (reading):

RESEARCH AND DEVELOPMENT AUTHORIZATION

SEC. 205. The Secretary of the Air Force is hereby authorized to conduct, engage, and participate in research and development programs related to activities of the Air Force of the United States and to procure, or contract for the use of, such facilities, equipment, services, and supplies as may be required to effecuate such programs.

The CHAIRMAN. Any comments? If not, read section 206.

Mr. BLANDFORD (reading):

APPROPRIATION AUTHORIZATIONS

SEC. 206. There are hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums of money as may be necessary, to carry out the purposes of this title. Moneys appropriated to carry out the purposes of sections 204 and 205 of this title shall remain available until expended.

The CHAIRMAN. Any comments? If not, read section 207.

Secretary SYMINGTON. Mr. Chairman, could I comment on that?

The CHAIRMAN. Yes.

Secretary SYMINGTON. I thing Mr. Cole asked a very pertinent question to our problem, inasmuch as in fields like the guided missile field, for example, there is much research in addition to straight development. I have 10 of them and I just checked 2 of them. One was started in 1945 and estimated to be completed in 1954. Another started in 1945 and is estimated to be completed in 1958. The third one had an 8-year span. That is 10, 13, and 8.

Mr. BROOKS. Mr. Secretary, would this include the development of new aircraft? For instance, I think the record shows that it has taken as long as 10 or 12 years sometimes to develop new type of aircraft. This would include it, would it?

Secretary SYMINGTON. Yes, sir.

Mr. BROOKS. For instance, I believe the B–29, or was it the B–17, took about 10 years to develop?

Secretary SYMINGTON. I think the B–17 took about 8 years.

Mr. BROOKS. Eight years?

Secretary SYMINGTON. The B–29 took a little faster because it was under wartime impetus.

Mr. JOHNSON. Mr. Chairman, I don't see anything for orthodox weapons, like machine guns. Would that include it?

Secretary SYMINGTON. Machine guns are developed for us by the Army. If there was any special work of that character for airplanes——

Mr. JOHNSON. Is there a field of weapons that wouldn't be included in what you have here?

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Secretary SYMINGTON. I don't think so, sir.
The CHAIRMAN. Now read section 207—
Mr. KILDAY. Just on that point.
Mr. Secretary, do you reimburse the Army for armament?
Secretary SYMINGTON. Yes, sir.
Mr. KILDAY. That is reimbursed under your appropriation?
Secretary SYMINGTON. That is right.
The CHAIRMAN. Read section 207.
Mr. BLANDFORD (reading):

SAVING PROVISION

SEC. 207. No provision of this title shall be construed as modifying the existing status of the Air National Guard of the United States as a Reserve component of the Air Force of the United States, or as amending or modifying in any way section 60 of the National Defense Act of 1916, as amended.

The CHAIRMAN. General Reckord.
General RECKORD. Yes, Mr. Chairman.
The CHAIRMAN. Have you any comment on section 207?
General RECKORD. Very satisfactory, Mr. Chairman.
The CHAIRMAN. Satisfactory to you, Mr. Symington?
Secretary SYMINGTON. Yes, Mr. Chairman.
The CHAIRMAN. Read the next section, then——
Mr. KILDAY. Mr. Chairman, you raised a question a while ago whether the Department would go along with the bill in the Senate. I would like to ask the same question of General Reckord.
The CHAIRMAN. Yes; I am satisfied you are going to support it, are you not, General?
General RECKORD. I didn't hear the question, Mr. Chairman.
The CHAIRMAN. Are you going to wreck the bill in the Senate or are you going along?
General RECKORD. We are going to support the bill as it is reported from this committee.
The CHAIRMAN. Thank you, sir.
Mr. SASSCER. Mr. Chairman, may I ask one question right there?
The CHAIRMAN. Yes.
Mr. SASSCER. I notice the authorized strength of the Reserve is approximately five times that of the National Guard. It is anticipated to build up a Reserve five times as big as the National Guard?
The CHAIRMAN. General Evans?
Mr. OLIVER. Yes, sir, we will support the bill.
The CHAIRMAN. Well, the reason we put the figure 980,000 for the Reserve is because we want them to have a worth-while Reserve.
As a matter of fact, you recall that when we passed an act requiring every man who left the service to go into the Reserve, somehow or another they forgot it and nobody went in the Reserve. Now we are going to try to build up the Reserve.
Mr. SASSCER. I wasn't questioning the building up of the Reserve. My question was directed as to whether or not it was anticipated that we would build up a Reserve in line with these components five times as big as the National Guard.
In other words, in the bill you authorize a Reserve five times as large as the National Guard; one, 500,000 and one, 100,000.

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Do they anticipate having a Reserve of that size?

Colonel OLIVER. At the present time there are some two hundred-odd thousand Air Reserve officers and one hundred-odd thousand Air enlisted men. Am I correct, General Quesada?

General QUESADA. That is right.

Coloned OLIVER. In other words, they are actually in existence at the present time although they have not been organized as units.

The CHAIRMAN. Well, I may say, I am hoping a little bit later on that the committee will authorize an investigation in regard to what is being done by the Department with reference to building up a Reserve. It has 70-some-odd million dollars and it is the first Department that I have ever known that isn't spending what it gets. So we want to have a little hearing later on to see what is being accomplished. I think we all have the same objective in view. No doubt the Department will build up a Reserve as fast as possible. So we have been rather generous in the over-all ceiling, but we don't want to merely put it on paper. We want to put it in being. If we can aid the Department in putting it in being, why that is what we want to do. So the hearing will at least commence friendly. I don't know where it will end up. But we all have the objective of trying to build up the Reserve.

Now, of course, we all recognize the fact that the Department has concentrated on the National Guard and has accomplished something that we can all feel proud of.

Now it might not have been possible to have accomplished both at the same time. Since then we have built up such a strong National Guard that it is, I would say, about 75 percent complete, so now we want to turn some of our thoughts to the Reserve and try to do something for the Reserve.

Now, read the next section.

Mr. BLANDFORD (reading):

Repeal of existing law. SEC. 208. Section 8 of the act of July 2, 1926 (44 Stat. 780), as amended by section 1 of the act of April 3, 1939 (53 Stat. 555), is hereby repealed.

The CHAIRMAN. Now, let me ask you, what law is that?

Mr. HARLOW. That is the aircraft authorization, sir, on the present law allowing 6,000 aircraft for the old Army Air Corps.

The CHAIRMAN. Oh, yes.

Mr. KILDAY. Is that still in the law? I thought we repealed that.

Mr. HARLOW. No, sir. That was suspended.

The CHAIRMAN. Now, read the next section.

Mr. BLANDFORD (reading):

TITLE III—GENERAL PROVISIONS

SAVING PROVISION

SEC. 301. Nothing in this act shall be construed to alter or modify the duties and authority of the Secretary of Defense and the Departments and agencies of the National Military Establishment as provided in the National Security Act of 1947 (Public Law 253, 80th Cong.).

The CHAIRMAN. That simply means that the powers delegated in the National Security Act are not diminished or increased. They are just standing exactly where they are.

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Secretary SYMINGTON. Mr. Chairman, could I make a comment on the section ahead of that, sir?

The Chairman. Yes.

Secretary SYMINGTON. First, with respect to the Reserve, the Reserve Officers Association has many members of the former Regular Air Force in it and we are very grateful to General Evans and his people for supporting this and helping us with this bill. However, we have two other organizations which are also most interested in the Air Force Reserve.

First, is the Air Reserve Association, of which General McCarthy of Oregon is now the President and General Bob Smith of Dallas was the President. And when hearings come up which involve the Air Force Reserve, we would like to have them here also, if that is in order.

The CHAIRMAN. You mustn't construe what I said in the slightest degree as criticism.

Secretary SYMINGTON. No, sir.

The CHAIRMAN. We know what you have been handicapped with. We know how hard you worked to build up the guard. You can't do both at the same time.

Secretary SYMINGTON. Yes, sir.

The CHAIRMAN. Now you have made such a wonderful record with that we feel with a little aid and assistance and cooperation of the committee we can point with the same degree of pride to the Reserve a little bit later on.

Secretary SYMINGTON. Thank you, sir.

Then there is one other organization which has great interest in the Air Force and where we have forced our generals and privates who are in the same membership, and that is the Air Force Association.

When Reserve and Air Force questions come up, we would appreciate it if you and this committee would consider them.

The CHAIRMAN. All right, sir, it will be a pleasure.

Secretary SYMINGTON. There is one other——

The CHAIRMAN. The only suggestion I have: Don't try to build up too many witnesses.

Secretary SYMINGTON. They will be short, but I think that will be pertinent.

The only other point is, when we talk about the Reserve, I think we ought to realize that our great problem in the air aspect of Reserves is the problem of equipment. For example, I asked General McConnell how many men use a plane in the National Guard and he says that the National Guard has one plane per man—is that right?

General MCCONNELL. Crew.

Secretary SYMINGTON. One crew per plane. That is one pilot, therefore, because 24 of the 27 groups are fighter.

If you want to see what we get into if we try to carry out that policy with Reserves then multiply 109,000 pilots who are in the Reserves by $165,000 to $765,000, which is the range of cost of modern fighter planes.

The CHAIRMAN. Well, of course, all those are factors to be considered when we get to it. But we will try to help you along on that.

Mr. ELSTON. Mr. Chairman, I wonder if the word "later" in here is a little confusing. The provisions of this act do alter some of the duties and authority of the Secretary of Defense.

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As I understand it, this simply means that the provisions of this law are in addition to the authority and duties prescribed in the National Security Act.

The CHAIRMAN. Oh, no. There is nothing in this act that confers any more authority on the Secretary than he has under the act of 1947.

What the objective of this is is just to let it stand in status quo, and nothing in this act changes his status and his powers in the slightest degree.

Now, whether you say "alter," it might create the impression that there is something in here that did alter it, but I am hoping there is nothing in here that does alter his powers.

You think it indicates that something in here has altered it?

Mr. ELSTON. Well, it would look like some more authority is given than existed in the National Defense Act. We want to make it plain that that is in addition to his authority.

The CHAIRMAN. Well, the staff raises the point, that might be raised on the floor and might be raised here.

What is the authority of the two Secretaries now with reference to for example procurement. That is set out in the National Military Establishment law. Nothing in this law supersedes or delegated any higher authority to the Secretaries than the National Military Establishment law.

Secretary SYMINGTON. Mr. Chairman, if I may answer that, sir—and I know you want to get ahead—in the present procurement law we are not allowed to procure until first we obtain approval of the Secretary of Defense.

The CHAIRMAN. That is right.

Secretary SYMINGTON. Then he passes our procurement to the Research and Development Board and to the Munitions Board. Then after that is over, all procurement has to go to the Bureau of the Budget and the President issues a statement approving the recommendation of the Secretary of Defense.

The CHAIRMAN. That is in accordance with the amendment that was written in the appropriation bill.

Secretary SYMINGTON. In the appropriations bill plus the administrative procedure that the Secretary of Defense has decided on with respect to that amendment.

The CHAIRMAN. Now, it has been suggested on section 301 that it should be modified to read this way:

> The provisions of this act shall be subject to the duties and authority of the Secretary of Defense and agencies of the National Military Establishment.

Then, that makes it a little bit clearer.

Mr. Cole has offered that amendment and I suggest that it be put in.

Mr. KILDAY. Now, Mr. Chairman——

The CHAIRMAN. That the provisions of this act shall be subject to the duties and authority of the Secretary of National Defense and the departments and agencies of the National Military Establishment, as provided in the National Security Act of 1947.

Mr. KILDAY. I think we ought to get it clear here that the authority now held by the Secretaries is the same as the authority that we are putting in one law here. This doesn't alter existing law in any major respect, does it? You now have the procurement authority that we are expressing in definite language in one bill?

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Secretary SYMINGTON. I would say "Yes"; yes, sir.

The CHAIRMAN. That is right. In other words, there is nothing in this bill that changes your method of procurement. And the committee wants to let it stand just like it is now, but at the same time we don't want to disturb the National Military Establishment law.

We want that to stand just like it is.

Mr. KILDAY. So the House won't get the impression that we are granting new and novel authority to the Secretaries which they don't already have. They do have it at this time.

Secretary SYMINGTON. That is right.

The CHAIRMAN. So the House also won't get in mind that we are granting additional powers to the Secretary of National Defense.

Now, without objection, the amendment is agreed to.

Now read the last one.

Mr. BLANDFORD (reading):

SEPARABILITY PROVISION

SEC. 302. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

The CHAIRMAN. Now, members of the committee, that finishes a section by section reading for consideration of the committee of the proposed substitute print.

Any comment from any members of the committee? If not, then I will ask the clerk to call the roll. And all in favor of voting for this amendment to strike out all of the enacting clause and insert the committee print No. 2 as amended, when your name is called, vote, "aye" and all opposed, "no."

Call the roll——

Mr. COLE. Mr. Chairman, let me ask if there is any objection to introducing this as a new bill, to avoid the confusion in handling it on the floor?

The CHAIRMAN. I am purposely asking the committee to let it go in this way to show the House the care with which the committee considered it. There won't be any confusion because we are merely striking out what was first in 1437 and then this comes right behind it, without any amendments in it at all, and so you have only one vote in the House.

Mr. COLE. Then I suggest that in your rule you ask to have the bill considered as a new bill.

The CHAIRMAN. Oh, yes.

Mr. BROOKS. Mr. Chairman, is your motion to move in favor of consideration of the amendment?

The CHAIRMAN. Yes.

Mr. KILDAY. And report it?

The CHAIRMAN. Report the bill favorably.

Call the roll.

(Whereupon, a roll call was taken.)

The CHAIRMAN. A quorum being present, the bill is unanimously reported.

Now, members of the committee, I will ask for a rule, and I will notify Mr. Short if he is here or Mr. Arends or Mr. Cole. It is always

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the policy to notify the ranking minority member when you go before the Rules Committee so he can go or at least express his position. The thought is running through my mind to ask the Rules Committee to give 4 hours' general debate because there will not be much under the 5-minute rule for debate. And I hope all of the members, when the bill is considered on the floor, will participate in the debate.

Now I would like to have, in view of our vote, authority when I appear before the Appropriations Committee in support of a provision for a 70-air group, to assure the Appropriations Committee that the Armed Services Committee feels like the appropriations should be increased at least $800,000,000.

Mr. BROOKS. I make that motion, Mr. Chairman.

Mr. SHORT. I second the motion.

Mr. BROOKS. That you be given that authority.

The CHAIRMAN. Then I understand that I will be so authorized. And I will ask Mr. Short to also appear before the Appropriations Committee in support of an increased appropriation of at least $800,000,000.

Mr. KILDAY. I don't hear any objection.

The CHAIRMAN. All right, so it is understood.

Now, members of the committee, there is a bill introduced by our distinguished colleague and former Senator from New York, as I always address him, because I knew him down here when he was a Senator, H. R. 1945, to permit the Vice President to be a member of the National Security Council. I would like to take that bill up tomorrow morning, and I would like for the staff to notify Mr. Wadsworth, if it meets his convenience, to be here. I don't think there will be a long discussion of the bill because it is so clear and defines what it proposes to do.

Then there is a bill that I introduced on my own volition, H. R. 2010, to give to the Armed Services Committee of the House and Senate the same control over the acquisition and disposal of realty and enter into contracts for realty that the committee had with reference to the Navy Department.

I would like also to take that bill up tomorrow morning, after we finish with Mr. Wadsworth, and ask that the clerks notify someone from the War Department, if they want to be heard, and the Air Force if they want to be heard, to be here. It is purely a question of policy for us to fix, but we would like to have the benefit of their views.

Now, after we get through with these two bills tomorrow, if we can dispose of them, I am asking that Mr. Durham's subcommittee sit and commence a hearing on the radar bill that has been referred to him.

The other two subcommittees, if they desire to take up what bills are before them, I will ask that they go to work on those matters referred to them.

I think that is all we have this morning, and unless there is something we will take a recess until tomorrow morning at 10 o'clock.

(Whereupon, the committee adjourned.)

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MAR 10 '49

[No. 13]

TO UNIFY, CONSOLIDATE, REVISE, AND CODIFY THE ARTICLES OF WAR, THE ARTICLES FOR THE GOVERNMENT OF THE NAVY, AND THE DISCIPLINARY LAWS OF THE COAST GUARD AND TO ENACT AND ESTABLISH A UNIFORM CODE OF MILITARY JUSTICE (H. R. 2498). MR. VINSON

THE SECRETARY OF DEFENSE,
Washington, February 8, 1949.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith, on behalf of the National Military Establishment, a draft of a proposed bill to unify, consolidate, revise, and codify the Articles of War, the Articles for the Government of the Navy, and the disciplinary laws of the Coast Guard and to enact and establish a Uniform Code of Military Justice.

The proposed code is based on a study made by a special committee in this office, of which Prof. Edmund M. Morgan, Jr., of the Harvard Law School was chairman. The code covers both the substantive and procedural law governing military justice and its administration in all the armed forces of the United States and is uniformly applicable in all its parts to the Army, the Navy, the Air Force, and the Coast Guard in time of war and peace.

The proposed code provides the sole statutory authority for—

(1) The infliction of limited disciplinary penalties for minor offenses without judicial action;

(2) The establishment of pretrial and trial procedure;

(3) The creation and constitution of three classes of courts martial corresponding to those now in existence;

(4) The eligibility of members of each of the courts and the qualifications of its officers and counsel;

(5) The review of findings and sentence and the creation and constitution of the reviewing tribunals; and

(6) The listing and definition of offenses, redrafted and rephrased in modern legislative language.

Attention is called to the provisions of the code which are designed to provide for uniformity in the administration of military justice, to those designed to assure the accused a fair trial, to those designed to prevent undue control or interference with the administration of military justice, and to those designed to preserve appropriate military functions.

Among the provisions designed to insure uniformity are the following:

(1) The offenses made punishable by the code are identical for all armed forces;

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(2) The same system of courts with the same limits of jurisdiction of each court is set up in all the armed forces;

(3) The procedure for general courts martial is identical as to institution of charges, pretrial investigation, action by the convening authority, review by the Board of Review, and review by the Judicial Council in all the armed forces;

(4) The rules of procedure at the trial, including modes of proof, are equally applicable to all the armed forces;

(5) The Judge Advocates General of the three departments are required to make uniform rules of procedure for the Board of Review in each department;

(6) The required qualifications for members of the court, law officer, and counsel are identical for all the armed forces;

(7) The single Judicial Council, which finally decides all questions of law, is the court of last resort for each of the armed forces; and also acts with the Judge Advocates General of the three departments as an advisory body with a view to securing uniformity in policy and in sentences and in discovering and remedying defects in the system and its administration.

Among the provisions designed to insure a fair trial are the following:

General courts martial

(1) A pretrial investigation is provided, at which the accused is entitled to be present with counsel to cross-examine available witnesses against him and to present evidence in his own behalf. It has some features of preliminary hearing and some of pretrial discovery as used in the civil courts.

(2) A prohibition against referring any charge for trial which does not state an offense or is not shown to be supported by sufficient evidence.

(3) A mandatory provision for competent, legally trained counsel at the trial for both the prosecution and the defense.

(4) A prohibition against requesting any statement from the accused without warning, and against compelling self-incrimination, and against reception in evidence of improperly obtained statements.

(5) Provision for equal process to accused and prosecution for obtaining witnesses and depositions and a provision allowing only the accused to use depositions in a capital case.

(6) A provision giving an accused enlisted man the privilege of having enlisted men as members of the court trying his case.

(7) A provision whereby voting on challenges, findings, and sentence is by secret ballot of the members of the court.

(8) A provision requiring the law officer to instruct the court on the record concerning the elements of the offense, presumption of innocence, and the burden of proof.

(9) A provision for an automatic review of the trial record for errors of law and of fact by a Board of Review with the right of the accused to be represented by legally competent counsel.

(10) A provision for the review of the record for errors of law by the Judicial Council. This review is automatic in the case where the sentence is death or dismissal and is upon petition showing probable error of law where the sentence involves more than 1 year's confinement, with the right to be represented by competent counsel.

(11) A prohibition against receiving pleas of guilty in capital cases.

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Special courts martial

In addition to certain of the above provisions which also apply to special courts martial, there is provided as follows:

(1) The trial counsel and defense counsel must be equally qualified.

(2) In cases where a bad-conduct discharge has been imposed, a full stenographic transcript must be taken and the case is reviewed in the same fashion as a general court-martial record.

(3) Peremptory challenge and voting by secret ballot is provided as in a general court martial.

(4) Review by judge advocate or legal officer is required.

Summary courts martial

(1) Provision is made for permitting an accused to refuse trial by summary court upon request.

(2) Review by a judge advocate or legal officer is required.

Among some of the provisions designed to prevent interference with the due administration of justice are the following:

(1) The convening authority may not refer charges for trial until they are found legally sufficient by the staff judge advocate or legal officer.

(2) The staff judge advocate or legal officer is authorized to communicate directly with the Judge Advocate General.

(3) All counsel at a general court-martial trial are required to be lawyers and to be certified by the Judge Advocate General as qualified to perform their legal duties.

(4) The law officer—a competent lawyer—rules on all questions raised at the trial, except on a motion for a directed verdict and on the issue of the accused's sanity.

(5) The convening authority must not act on a finding or sentence of a general court martial without first obtaining the advice of his staff judge advocate or legal officer.

(6) The Board of Review, situated in the office of the Judge Advocate General and removed from the convening authority, is composed of legally trained men and reviews the trial record for errors of law and of fact.

(7) The Judicial Council is composed of civilians and passes finally on all questions of law.

(8) When counsel appear before the Board of Review and the Judicial Council, both parties must be represented by qualified lawyers.

(9) Censure by a commanding officer of a court martial or any member or officer thereof because of any judicial action of the court or any member or officer is forbidden and any attempt improperly to influence official action in any aspect of a trial or its review is prohibited.

Elements of command

Among the command functions which are found in the present Articles of War and Articles for the Government of the Navy, the following provisions have been retained:

(1) Commanding officers refer the charges in general, special and summary courts martial and convene the courts.

(2) Commanding officers appoint the members of the courts.

(3) Commanding officers appoint the law officer and counsel for the trial.

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(4) Commanding officers retain full power to set aside findings of guilty and to modify or change the sentence, but are not permitted to interfere with verdicts of not guilty nor to increase the severity of the sentence imposed.

(5) The powers of commanding officers at mast and company punishment are retained for minor offenses which require prompt action and for which comparatively light punishments can be imposed. The procedural safeguards in this type of nonjudicial punishment are considerably less than in the courts martial, but are believed to be reasonably adequate.

I regard this proposed bill as an outstanding example of unification in the armed services. In my opinion, the proposed bill is well-designed to protect the rights of those subject to it, will increase public confidence in military justice, and will not impair the performance of military functions. Accordingly, I strongly urge its passage by the Congress.

The Bureau of the Budget has advised me that the proposed bill is fully in accord with the program of the President.

Sincerely yours,

JAMES FORRESTAL.

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MAR 10 '49

[No. 14]

FULL COMMITTEE HEARING ON H. R. 1945, TO AMEND THE NATIONAL SECURITY ACT OF 1947 BY PROVIDING THAT THE VICE PRESIDENT SHALL BE A MEMBER OF THE NATIONAL SECURITY COUNCIL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Wednesday, February 9, 1949.

The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. Let the committee come to order.

The first bill to be called up this morning is H. R. 1945, introduced by the distinguished gentleman from New York, Mr. Wadsworth.

(H. R. 1945 is as follows:)

[H. R. 1945, 81st Cong., 1st sess.]

A BILL To amend the National Security Act of 1947 by providing that the Vice President shall be a member of the National Security Council

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fourth paragraph of section 101 (a) of the National Security Act of 1947 (Public Law 253, Eightieth Congress) is hereby amended by inserting after "President;" the following: "the Vice President;".

The CHAIRMAN. Mr. Wadsworth, the committee will be pleased to have you make any statement you desire to make with reference to this bill.

STATEMENT BY HON. JAMES W. WADSWORTH, REPRESENTATIVE IN CONGRESS FROM THE FORTY-FIRST DISTRICT, STATE OF NEW YORK

Mr. WADSWORTH. Mr. Chairman and gentlemen, I thank you for giving me this opportunity and I can assure you that my observations will not be very lengthy.

This bill, H. R. 1945, which I introduced on January 27 last, seeks to amend the National Security Act of 1947 by providing that the Vice President shall be a member of the National Security Council.

The make-up of the National Security Council will be found in section 101 of the National Security Act of 1947, the first section under title I of that act. It is found on page 2 of the printed copy of the act. It reads:

There is hereby established a council to be known as the National Security Council, hereinafter in this section referred to as the Council. The President of the United States shall preside over the meetings of the Council: *Provided*, That in his absence he may designate a member of the Council to preside in his place.

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I shall not read the whole section. [Reading:]

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military service and the other departments and agencies of the Government to operate more effectively in the matter involving the national security.

The section goes on to recite that in addition to the President, the Council shall consist of the Secretary of State, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Chairman of the National Security Resource Board; and then goes on to say:

and such of the following-named officers of executive departments: The Chairman of the Munitions Board, the Chairman of Research and Development Board, but no such additional member shall be designated until the advice and consent of the Senate has been given to his appointment to the office he is holding.

As you will see, the attempt here made was to establish a consultative body whose members should exchange information and discussions of policy with the President presiding and thus integrate as the section implies, or seeks to do, the performance of the United States in the field of foreign relations, and in the field of national defense, having in mind, of course, all the time that our resources; that is, our national resources as well as our manpower, are an exceedingly important element in the whole picture.

It is the first time in the history of our Government that such a council has been set up, and, for one, I rejoice that it has been done. I think it fair to say that in all probability it is the most important consultative body created by statute in the structure of our Government.

The Cabinet is not created by statute.

Mr. KILDAY. I did not catch that.

Mr. WADSWORTH. The Cabinet is not created by statute. Heads of departments may be members of the Cabinet, but I think the Cabinet itself is not defined in any statute. I may be mistaken.

Mr. KILDAY. I thought that it was.

Mr. WADSWORTH. Well, I may be mistaken.

Mr. KILDAY. I do not know.

Mr. WADSWORTH. In any event, the purpose of this section, I think, is obvious and very meritorious.

Now, talk has been going on for years and years as to what service to his country the Vice President of the United States might perform. I am now speaking impersonally. As a matter of fact, and this is off the record.

(Discussion had outside the record.)

Mr. WADSWORTH. The only duty assigned to him is to preside over the Senate. He is not the servant of the President. We cannot put him in an administrative job and thus make him a subordinate of the President. It is difficult to find for him any administrative job even if we wanted to do so. We cannot put him at the head of a department. But it strikes me that a person occupying that office might well be assigned to a position on a consultative or advisory body such as the Security Council. His accession would add an additional civilian, and it may be noted that the Council here, according to the opinion of some people, is a little overweighted with representatives of the military branches. True, they are all civilians,

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but four of them represent the Military Establishment: The Secretary of Defense and the three departmental secretaries. The Secretary of State is a civilian, of course, and without connection with the Military Establishment, and the Chairman of the National Resources Board is a civilian without connection with the Military Establishment.

So that by adding the Vice President, you would add an out-and-out civilian. But to my mind, there is something more important about it than merely adding the Vice President as a consultant. He is the potential successor of the President of the United States from the moment he takes office. I do not think I am wrong in saying that generally speaking back through the years the Vice Presidents, with perhaps one or two exceptions, have not had an opportunity to become thoroughly informed as to what was going on inside the higher echelons of the United States Government.

Some Presidents, of course, have invited, on their own initiative, a Vice President to sit in occasionally. Other Presidents have not done so. And there could be no reliance that such a custom would prevail invariably down through the decades that are to come.

If the Vice President of the United States were given a seat on this Council, he would thus become thoroughly informed as the result of the discussions in the Council concerning the intricacies of our foreign policies, the problems of our national defense, and the fundamental problems of our national resources, so that if by some unfortunate event he should suddenly find himself in the office of the President of the United States, he would not go into that office uninformed.

Mr. KILDAY. Mr. Chairman.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. But is it not your concept of the office of Vice President that he is a representative of the legislative branch, rather than of the executive branch, and by putting him on this Council we have representation from the legislative branch which we do not now have?

Mr. WADSWORTH. Well, there we get into a constitutional question. I do not visualize the Vice President as a member of the legislative branch.

Mr. KILDAY. I do.

Mr. WADSWORTH. True, he presides over one of the bodies.

Mr. KILDAY. That is his only duty; his only constitutional duty.

Mr. WADSWORTH. The only duty and the only part he takes in legislation is when there is a tie vote in the Senate. He takes no part in the preparation of bills. He is not a member of a standing committee. He is a figure, and a dignified figure.

Mr. KILDAY. In close contact with the legislative branch.

Mr. WADSWORTH. But he is in close contact personally with 96 Senators, which is a valuable contact——

Mr. KILDAY. Yes.

Mr. WADSWORTH. If he is to bring his knowledge resulting from those contacts to the attention of this Council. And certainly I would not say that he was a member of the executive branch of the Government.

Mr. KILDAY. He has no executive duties.

Mr. WADSWORTH. As a matter of fact, he has scarcely anything to do except preside with dignity.

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Mr. KILDAY. Well, you mentioned that you had not spoken to Mr. Barkley about this, but it is your understanding that he would welcome this opportunity; is that right?

Mr. WADSWORTH. I have no information about it at all.

Mr. KILDAY. Of course, he is a vigorous, active man.

Mr. WADSWORTH. I was somewhat encouraged when upon the day of his inauguration, or perhaps the day afterward, the Vice President said he would be glad to do some more work. I remember he said something to that effect.

Mr. BROOKS. Senator, the Vice President is one of the two men in the National Government that has the endorsement of a majority of the people of the country.

Mr. WADSWORTH. A majority of the electoral college.

Mr. BROOKS. Well, the electoral college, but that, to all intents and purposes, carries with it the majority of the people voting in the country.

Mr. WADSWORTH. Oh, yes.

Mr. BROOKS. All of the other legislators in the Senate or the House represent areas.

Mr. WADSWORTH. Yes. I think it can be said truthfully that he represents, to a very considerable degree, the people of the United States, and potentially he is the Chief Executive.

I shall not go into details, gentlemen, because it would not be fitting, but within my knowledge, there have been occasions when a Vice President has succeeded to the Presidency without knowing what has been going on.

Mr. ARENDS. That is one of the most pertinent parts of your argument.

Mr. KILDAY. Very frequently that has been true.

Mr. VAN ZANDT. Senator, it is your thought, too, that the Vice President would bring to this Council probably first-hand sentiment as far as legislation is concerned in the Congress?

Mr. WADSWORTH. He would be a good liaison officer, as it were, between the legislative branch and this Council.

Mr. VAN ZANDT. Would it throw out of balance the Council in any way? You did mention the military and civilian composition.

Mr. WADSWORTH. I cannot see that it would.

Now, some recommendations are coming to this committee, I am told, from the Hoover Commission. I am not certain about them, but my best information is to the effect that the Hoover Commission will recommend that the three departmental Secretaries retire from the Security Council. That will leave the Council consisting of the President, the Secretary of State, the Secretary of Defense, and the Chairman of the Security Resources Board.

By adding the Vice President, you will make a board of five, and for other reasons which are far more important, I think his addition would be very valuable to the Council and to the country.

The CHAIRMAN. Now, any questions to the Senator from any members of the committee?

Mr. WADSWORTH. There is one other thing which may occur. I noticed in the press of yesterday a sort of map or chart of the topside organizations which may be recommended by the Hoover Commission, and on that map or chart it is indicated that this Council be what might be termed a "personal agency" of the President. There were one or two others, also.

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If this committee should decide to act favorably upon this bill and a certain change in the position of the Council be recommended later and approved by the Congress—and it will have to be under a separate package—it might be that the title of this bill or the section mentioned would have to be changed, but the passage of the bill would make no difference whatsoever otherwise.

Mr. DOYLE. May I ask a question, Mr. Chariman?

The CHAIRMAN. Mr. Doyle.

Mr. DOYLE. Why do you figure the framers of our Constitution did not decide some more specific duty for the Vice President than just presiding over the Senate?

Mr. WADSWORTH. Now, I am not a constitutional lawyer, but let me make this suggestion: Under the Constitution, the entire executive power is lodged with the President of the United States and no one can share it with him, not even the Vice President. So it would be pretty difficult for any Congress to give or the original writers of the Constitution to have given the Vice President an administrative or executive job.

The Chairman. I would say, members of the committee, the Senator discussed this matter with me before he introduced this bill and it impressed me so much that I asked him to introduce the bill. I think it is a very fine step in utilizing a very key person, the Vice President.

As the Senator pointed out, it might so happen in the future, as it happened in the past, that the Vice President must take charge. So it is highly important that he be conversant with what is going on as far as it is humanly possible to do so, and this does afford him an opportunity to do it.

Mr. WADSWORTH. Yes.

The CHAIRMAN. So if there are no further questions from the members of the committee——

Mr. WADSWORTH. Just one other suggestion by way of warning.

The Chairman. Yes.

Mr. WADSWORTH. Some have suggested to me that the statute cites the Vice President as vice chairman of this Council. I hope that is not done.

The CHAIRMAN. No; you are right.

Mr. WADSWORTH. Give him nothing that bears a resemblance to an office.

Mr. KILDAY. Let the Council pick its chairman.

Mr. WADSWORTH. Absolutely.

Mr. JOHNSON. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Johnson.

Mr. JOHNSON. Senator, to me the most important part of this is—and I want to know if you concur with me: It may very well be that this whole Council, including the President, never had any legislative experience and there ought to be somebody on there who understands the legislation in the National Government, because much of what they do will finally find its way through the Halls of Congress.

Mr. WADSWORTH. Certainly.

Mr. JOHNSON. And there you have a man who is really an expert on it.

Mr. WADSWORTH. There is your liaison.

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Mr. KILDAY. I still insist that the Vice President is a representative of the legislative branch.

The CHAIRMAN. All right. A quorum of the committee is present; is that right?

Mr. HARPER. Yes, sir.

The CHAIRMAN. Without objection, the bill will be favorably reported, and I will try to call it one day next week.

And Mr. Wadsworth, when this bill is called up, I will yield the time to you to address the House and explain the justification and reason for the bill. So we will keep you posted.

Mr. WADSWORTH. I will do my best to empty the Hall.

The CHAIRMAN. Thank you very much.

Mr. HARPER. Who is going to report the bill?

The CHAIRMAN. I will report the bill.

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MAR 10 '49

H. R. 2546 TO AUTHORIZE THE E TO ESTABLISH LAND-BASED INSTALLATIONS FOR THE NA- THER PURPOSES

REPRESENTATIVES,
ON ARMED SERVICES,
SUBCOMMITTEE No. 3,
Thursday, February 10, 1949.

m., Hon. Carl T. Durham (subcom-

e come to order.
representatives of the armed serv-
at deal of the information pertaining
a classified nature, so I am going to
open session to all questions which
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he answers to questions which bring
haracter.
e hearings in approximately the same
dle the questions that were submitted
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nderlying issues and assumptions per-

d to submit written replies to all of these
asked to divide their answers into two
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hich are classified.
ill have the answers to these questions as
e prepared to place in the record during
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appreciate it if they would be prepared to
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d session.
before us a bill which was introduced yester-
all you members have a copy of.
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MAR 10 '49

[No. 15]

BCOMMITTEE HEARINGS ON H. R. 2546 TO AUTHORIZE THE SECRETARY OF THE AIR FORCE TO ESTABLISH LAND-BASED AIR WARNING AND CONTROL INSTALLATIONS FOR THE NATIONAL SECURITY, AND FOR OTHER PURPOSES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 3,
Thursday, February 10, 1949.

The subcommittee met at 10 a. m., Hon. Carl T. Durham (subcommittee chairman) presiding.

Mr. DURHAM. Let the committee come to order.

Members of the committee and representatives of the armed servs. it is to be expected that a great deal of the information pertaining this bill will necessarily be of a classified nature, so I am going to quest that the services reply in open session to all questions which k information that is not classified, and then later on we can go to executive session to hear the answers to questions which bring t information of a classified character.

In this way we will handle the hearings in approximately the same nner as it is proposed to handle the questions that were submitted all three of the armed services by the committee 2 days ago and ich relate to some of the underlying issues and assumptions pering to the bill.

The services have been asked to submit written replies to all of these estions. They have been asked to divide their answers into two itten sets: One set containing those which are unclassified and the her set containing those which are classified.

I trust that the services will have the answers to these questions as rly as possible and will be prepared to place in the record during e open session the written answers to those questions which they n answer. And I would appreciate it if they would be prepared to esent the written answers to classified questions to the full subommittee during a closed session.

This morning we have before us a bill which was introduced yesterday (H. R. 2546), which all you members have a copy of.

(H. R. 2546 is as follows:)

[H. R. 2546, 81st Cong., 1st sess.]

BILL To authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of merica in Congress assembled, That the Secretary of the Air Force is hereby thorized to establish and develop within and without the continental limits of e United States in fulfilling the air defense responsibilities of the Department the Air Force such land-based air warning and control installations and cilities, by the construction, installation, or equipment of temporary or per-

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manent public works, including buildings, facilities, appurtenances, utilities, and access roads, and to provide for necessary administration and planning therefor, without regard to sections 1136, 3648, 3734, Revised Statutes, as he may deem necessary in the interest of national security.

SEC. 2. In furtherance of the above, the Secretary of the Air Force is authorized to make surveys and to acquire lands and rights pertaining thereto or other interests therein, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, and to place permanent and temporary improvements thereon whether such lands are held in fee or under lease, or under other temporary tenure.

SEC. 3. There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act, and when so specified in an appropriation Act such amounts shall remain available until expended.

THE SECRETARY OF DEFENSE.
Washington, February 8, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Secretary of the Air Force recommending the enactment of a proposed draft of legislation also attached, bearing the title "To authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Air Force.

Sincerely yours,

JAMES FORRESTAL.

FEBRUARY 8, 1949.

The SPEAKER, THE HOUSE OF REPRESENTATIVES:

DEAR MR. SPEAKER: There is submitted herewith draft of a proposed bill "To authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes", which the Department of the Air Force recommends be enacted into law. The Secretary of Defense has assigned responsibility for the preparation and submission of this measure on behalf of the National Military Establishment to this Department.

The purpose of the proposed legislation is to enable the Secretary of the Air Force to establish and develop, within and without the continental limits of the United States, in fulfilling the air-defense responsibilities of the Department of the Air Force, such land-based air warning and control facilities as he may deem necessary in the interest of national security. The establishment of an effective land-based radar protective screen will entail the construction, installation, and equipment of temporary or permanent public works, including buildings, facilities, appurtenances, utilities, and access roads. To accomplish the necessary construction work, the proposed legislation authorizes the Secretary of the Air Force to acquire land and rights thereto by donation, purchase, exchange of Government-owned land, or any other means, and to erect temporary or permanent facilities thereon without regard to sections 1136, 3648 and 3734, Revised Statutes, as amended.

The fiscal effect of this proposed legislation for construction will be $85,500,000 divided into increments in the fiscal years 1949 and 1950.

This report has been coordinated among the departments and boards of the National Military Establishment in accordance with the procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the Congress.

Sincerely,

STUART SYMINGTON.

Mr. DURHAM. We will have the first witness from the Air Force this morning, who is General Fairchild.

General Fairchild, do you have a written statement that you can give the committee this morning?

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General FAIRCHILD. Mr. Chairman, I do.

Mr. DURHAM. You can proceed with your statement.

STATEMENT BY GEN. MUIR S. FAIRCHILD, VICE CHIEF OF STAFF, UNITED STATES AIR FORCE

General FAIRCHILD. Mr. Chairman, I am General Fairchild, Vice Chief of Staff of the United States Air Force.

Mr. Chairman and gentlemen of the committee, the Department of the Air Force, on behalf of the National Military Establishment, much appreciates this opportunity to appear before your committee in support of this authorization bill.

The Air Force considers this bill to be of exceptional and pressing importance. It grants authorization to the Secretary of the Air Force, in fulfillment of the air-defense responsibilities of the Air Force, to establish the land-based aircraft warning and control facilities deemed necessary in the interest of national security.

It is, of course, quite unnecessary to stress the importance of providing the people, the Government and the industry of this country as adequate defense against attack from the air as is economically feasible. However, the basic importance of aircraft warning and control facilities in providing any sort of defense against attack from the air may not be so obvious.

To emphasize the importance which the Air Force attaches to the warning and control installations and facilities system authorized by this bill, I should like to stress that we know of no effective defense of any sort against attack from the air in the absence of such a system. Lacking such installations and facilities, we could expect no adequate warning of impending air attack. Our fighter aircraft could not be directed to intercept and oppose the hostile bombers. Our antiaircraft artillery would not be alerted to fire on the enemy planes as they approached. Even our people in their homes and factories would not have accurate warning to seek shelter in the event of hostile penetration of our defenses. Failure to provide such a system, therefore, could result in disaster on a Nation-wide scale and surely would result in unnecessary death and destruction throughout our country should we be attacked in the future. I consider the passage of this authorization act essential to the security of the United States.

It will require a considerable time to install, perfect, and make operational an adequate warning and control system. The urgency of authorization to begin this vital task is obvious.

Since the establishment of an aircraft warning and control radar system is of such singular and exceptional importance to the Nation as a defensive measure, the Air Force strongly believes and recommends that it should be specifically authorized by the Congress. We feel that a construction program of such magnitude and importance involving $85,500,000 should be approved by the Congress as a separate program and apart from the usual public-works authorization. I should like to emphasize that legislation for the establishment of such a system is in furtherance of a program approved by the Joint Chiefs of Staff, and that this bill bears the approval of the Secretary of Defense and the Bureau of the Budget.

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The Office of the Secretary of Defense has requested that the Department of the Air Force present an additional section to be added to the bill to read as follows:

The provisions of this Act shall be subject to the duties and authority of the Secretary of Defense and the departments and agencies of the National Military Establishment as provided in the National Security Act of 1947 (Public Law 253, Eightieth Congress).

Mr. Chairman, I should like at this time to introduce Maj. Gen. Gordon P. Saville, commanding general of the Air Defense Command, who is our acknowledged expert in this field. He will present the plan which the Air Force proposes to follow under this requested authorization. Thereafter, we will be available to answer any questions which the committee may desire.

Mr. DURHAM. General, you may proceed with your statement. Have you a prepared statement?

General SAVILLE. Yes, sir; I have.

Mr. DURHAM. Has the committee been furnished with copies?

General SAVILLE. Yes, sir.

(Copies distributed.)

Mr. DURHAM. You may proceed, General.

STATEMENT BY MAJ. GEN. GORDON P. SAVILLE, COMMANDING GENERAL, AIR DEFENSE COMMAND, USAF

General SAVILLE. Mr. Chairman and members of the committee, for the committee's information I should like to outline briefly the major principles upon which our requirements for aircraft warning are based. Some of the items I will cover are somewhat elementary, and undoubtedly a great many of the members of the committee will find that I am covering matters with which they are already very familiar. I believe, however, that it will serve a useful purpose in informing any members who are not already particularly familiar with radar and in reviewing our thoughts concerning the subject for the entire committee.

Basically, an aircraft warning and control system consists of radar stations, control centers, and a system of intercommunication. Its prime purpose is to detect and track enemy aircraft and to provide the information for the issuance of air-raid warnings and the operation of our defensive forces.

After several years of study, a definite plan and program for the establishment of an aircraft warning and control system in the United States and Alaska has now been finalized by the Air Force, and reviewed and approved by the Joint Chiefs of Staff and the Secretary of Defense. This proposed legislation would authorize the National Military Establishment to implement the plan.

The basic active defense weapon for any large area such as the United States is the fighter airplane, because of its tactical mobility and radius of action. Antiaircraft artillery, barrage balloons, rockets, and similar weapons are employed in local defense of selected installations and localities. This employment serves to increase the effectiveness of the over-all air defense, but primary reliance for the over-all air defense of large areas must be placed in fighter aircraft. For this reason, the first consideration in organizing an aircraft warn-

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ing and control system for the United States is to meet the requirements for fighter defense.

Fighters may be moved quickly to meet changing situations, but an aircraft-warning system is relatively fixed and immobile. We must, therefore, provide an aircraft-warning service in those areas in which it appears likely that we may be required to deploy fighters. The establishment of an aircraft warning service is, in effect, an "organization of the ground" to provide a capability for utilizing fighters effectively. Actual fighter deployment will depend upon the force available and the tactical situation.

Aircraft-warning requirements for fighter defense are based largely on the time-and-space relationship between friendly fighter performance, enemy aircraft performance, radar performance, geographic deployment of fighter airfields, geographic deployment of radar stations, and geographic location of the boundary of the area being defended.

With your permission, I should like to exhibit a few charts which I believe will graphically demonstrate some of the points which I would like to cover. The first chart shows these time-and-space relationships in a vertical plane. On this chart, a friendly fighter is assumed to be on ground-alert status at an airfield. This fighter is ready to take off on orders from a control center, and be navigated by ground-to-air communications to an interception. An advancing enemy aircraft is discovered by the aircraft-warning radars or spotters. During the period required for identification of the enemy, transmission of orders to the fighters to take-off, and actual take-off of the fighters, the enemy bomber advances the distance A. During this period the fighter is still at the airfield. While the fighter climbs to the enemy altitude, shown as distance B prime, the bomber advances the distance B. While the fighter is advancing the distance C prime, to the interception, the bomber advances the distance C and the interception is made. An area lying behind the point of interception and attack may be considered to be defended, while the area lying in front of this point cannot be defended by the fighter.

From this chart, it can be seen that if we could discover the enemy earlier—that is, farther out—we could intercept farther out. To do this, we could increase the power of our radars and get longer ranges, but technical characteristics of radar waves unfortunately impose limitations on radar performance.

Chart 2 illustrates the radar coverage from a ground-control-intercept radar station. The waves go out in straight lines, and the downward limit to the coverage is the line-of-sight to the horizon. As we increase the power of our radar, we can project the beam into space, beyond—but not below—the horizon. The earth's curvature produces a blank space under the beam. Aircraft following the earth's curvature would approach below the beam and not be picked up by the radar. When greater range is required at any particular altitude than can be provided by the radar, the only solution known today lies in the deployment outward of an additional radar station.

Chart 3 shows this outward deployment of the additional station to get early warning.

Chart 4 illustrates, in plane, the geographic relationship of fighter airfields, radar stations, and the defended area. On this chart,

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fighters on ground-alert are assumed to be at the airdrome shown. Incoming enemy aircraft are discovered by the radars on the blue line shown as "Outer limit of aircraft warning." Under these conditions, ground-alert fighters could intercept incoming enemy aircraft along the red line shown as the "Line of interception." The area behind this line could be called the defended area, while the area lying in front of this line is not provided fighter defense.

The next chart (chart 5) shows the same deployment of radar stations and fighter airfields, and the same line of interception. In addition, a vital target requiring fighter defense is assumed to lie outside the defended area. Under these assumed conditions, an additional radar deployed as shown would extend the radar cover. This would move the line of interception outward, and the vital target could be given fighter defense. Another solution would be to build a new fighter airfield near the vital target and deploy additional fighters on it. This solution is expensive both in construction and in fighters, and we try to meet our requirements by radar deployment. The deployment of radar stations in the aircraft-warning plan for the United States has been based on the full utilization of available airfields.

As we deploy our radars, we must establish control centers, into which the information provided by the radars is transmitted and from which we exercise tactical control over our defensive means—fighters and antiaircraft artillery. Chart 6 shows the communications about such a center. Here we have lines to radar stations for information and control; lines to civil, Air Force, and Navy airfields for operational control of fighters; lines to local antiaircraft artillery defenses for information and operational control; lines to CAA traffic-control centers for movement liaison and control; lines to adjacent and higher headquarters for command and coordination; lines to local military commands for air-raid warning and other purposes; lines to local civil-defense agencies for air-raid warning; and off-shore radio liaison for coordination with naval ships and forces at sea, all radiating from a control center when appropriate. In certain areas, some of these may be omitted, and the principal function of a control center may be to issue air-raid warnings. Nevertheless, the control center is the point from which all air-defense operations are controlled and directed for the given area. It is the command post of the area air-defense commander.

The entire United States must be organized into air-defense areas to enable us to conduct an effective air defense. This area organization is shown on chart 7. The entire United States is being divided into eight air-defense areas, for peacetime and initial operations in war. The red lines show the boundaries of the eight initial areas. Upon mobilization of the Air National Guard, the eight original areas will be subdivided as shown by the blue lines, to make a total of 20 air-defense areas, covering the whole United States. Each of these areas will be under the command of an area air-defense commander whose command post is a control center. The red stars show the control centers to be brought into operation by the Air National Guard a few days after mobilization. The combined star and dot at Albuquerque indicates that a cadre of Air Force personnel will man the center at all times until the Air National Guard unit at Albuquerque can be mobilized and made operational. Of the 12 control centers to

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e manned by the Air National Guard, 10 are used as peacetime training stations at the home of the unit. Two centers will have to be manned by National Guard units from other areas. These two must e constructed in advance and ready to receive the National Guard nits. These, plus the eight initial centers, make up the 10 centers in ur current construction program.

Chart 8 shows the chain of command from the Air Defense Command to the control centers. The commander of the eastern and western air defenses, respectively, will be charged with coordination with eastern and western sea frontier commanders and with appropriate United States Army commanders in matters of mutual interest concerning air defense. It is planned that the commanders of the three services will have a common information center—in the East and the West—where the air, ground, and sea situation, and the status of all forces can be displayed for the common information; and where operational coordination appropriate to that level may be achieved. Considerable progress has already been made in setting up these information centers, largely due to the initiative and efforts of the eastern and western sea frontier commanders. By coordination at these information centers Navy aircraft ashore may be made available to the operational control of the appropriate area air-defense commander; and Air Force aircraft on suitably located bases may be made available to the operational control of the appropriate naval antisubmarine warfare commander. Allocations would be made at this level, but actual operational control of all forces operating in air defense would be exercised from a control center.

Mr. Chairman, this concludes the principles upon which this is based. We would appreciate the opportunity of presenting some additional information which is classified, at the committee's convenience, but before doing so, we would like for the committee to hear a statement prepared for presentation in the open session by Col. Verne J. McCaul, United States Marine Corps, representing the Department of the Navy, and by Colonel Ekman, representing the Department of the Army.

Mr. DURHAM. Colonel, are you prepared to make your statement this morning?

Colonel MCCAUL. Yes, sir.

Mr. DURHAM. Is it just a general statement?

Colonel MCCAUL. Yes, sir.

Mr. DURHAM. All right; you may proceed with your statement.

STATEMENT BY COL. V. J. McCAUL, UNITED STATES MARINE CORPS

Colonel MCCAUL. I am authorized by the Office of Chief of Naval Operations to make the following statement, Mr. Chairman and members of the committee:

The proposed legislation which would authorize the development of a land-based aircraft control and warning system for the continental United States and Alaska is considered to be of high priority, particularly in view of the amount of time required to accomplish the permanent installation of certain radar equipments. It should be emphasized that an aircraft control and warning system does not in itself provide air defense, but is the primary and indispensable means by which air-defense weapons may be directed to their targets.

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Without essential land-based aircraft control and warning facilities in being, and fully operational, the Department of the Air Force cannot hope to discharge is primary responsibility for the air defense of the United States. Nor can the forces, including naval air forces, which the Department of the Navy is charged with furnishing in defense of the United States against air attack be utilized with maximum effectiveness unless employed in conjunction with the land-based air-defense system. The proposed aircraft control and warning system is considered necessary from the standpoint of national security, and while certain essential naval components thereof have, through action of the Bureau of the Budget, been excluded from the Navy's 1950 building program, the proposed system will nevertheless facilitate development of tactics and techniques for joint employment of available forces and equipment in the air defense of the United States. The Department of the Navy desires to support the legislation which has been proposed by the Department of the Air Force.

I desire to call attention to the fact that there has been insufficient time to obtain advice from the Bureau of the Budget as to the relationship of this statement to the program of the President.

That completes my statement, Mr. Chairman, and I would like to introduce Lt. Col. William E. Ekman.

Mr. DURHAM. Colonel, you may proceed with your statement. Who are you representing, the Army?

Colonel Ekman. Yes, sir.

Mr. DURHAM. Proceed.

STATEMENT BY LT. COL. WILLIAM E. EKMAN, DEPARTMENT OF THE ARMY

Colonel EKMAN. Mr. Chairman and members of the committee, I appear before you as the representative of the Department of the Army in regard to the proposed bill presently under consideration which would authorize the Department of the Air Force to establish aircraft warning and control facilities considered essential to the security of the United States.

Representatives of the Department of the Army have collaborated with the Department of the Air Force in considering the requirements for and the scope of the proposed aircraft warning and control system and are of the opinion that the early establishment thereof is in the interest of the national security. Early approval of the legislation under consideration is required in order to permit the Department of the Air Force to obtain and construct those facilities and installations required for the establishment of the proposed system.

The Department of the Army has studied all aspects of the problem facing the National Military Establishment in fulfilling its responsibilities for the air defense of the United States and agrees that the Air Force program for the establishment of an aircraft warning and control system is an essential element in the fulfillment of those responsbilities.

That concludes the statement, sir.

Mr. DURHAM. Thank you very much.

Now, General Fairchild, you were the first witness and read your statement first. There are probably some questions that some of the

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committee members would like to ask you. If any of those questions are questions that bear on security, why you can say so and we can have them answered later.

I understand from your statement that the Joint Chiefs of Staff and those on the highest level have agreed that carrying out this function of national defense shall be the responsibility of the Air Force.

General FAIRCHILD. That is correct, sir, and in addition that agreement has been approved by the Secretary of Defense and issued by him at the direction of the President.

Mr. DURHAM. Now, are there any questions by the committee for General Fairchild?

Mr. ARENDS. Mr. Chairman.

Mr. DURHAM. Mr. Ahrends.

Mr. ARENDS. I would like to ask you just one question: At the present time is there no coordinated plan of air warning defense in the United States?

General FAIRCHILD. There is a coordinated plan which utilizes such facilities as are available to us.

Mr. ARENDS. But it is extremely limited, is that it?

General FAIRCHILD. That is correct, sir.

Mr. ARENDS. Then let me ask another question: Are the expenditures for which this authorization is sought outside the budget? That is, the request for funds which this authorization would set up would be outside the present budget, would it not? I mean, this has not been cleared with the Budget?

Mr. DURHAM. It has been cleared by the Budget.

Mr. ARENDS. It has been cleared? I didn't see that. All right, the chairman says it has been cleared.

I was talking about this year's budget——

General Saville. Sir, may I make a statement in an attempt to answer that?

Mr. ARENDS. Yes, General.

General SAVILLE. Within the limitations that were imposed on the armed services——

Mr. ARENDS. That is what I wanted to know.

General SAVILLE. This figure has been in since the beginning. It has withstood every cut by the armed services. The money is impounded in some fashion unknown to me at the moment, but I think the statement is yes, that it has been included in those budget estimates.

There is one exception to that, sir, and it is that in an effort to get on with this program rapidly part of the money needed has already been diverted by the Air Force from past appropriations—that is, as much as could be legally diverted—and second, the balance of the money is contained in the supplemental. There is a supplemental appropriation—1949—in which part of it was contained.

One other thing, sir. The picket vessels—the four picket vessels that were in the program—are now not reflected in the current budget.

Mr. ARENDS. According to this testimony, the over-all cost would be an approximate $85,000,000?

General SAVILLE. That is for construction, sir. That is not equipment.

Mr. ARENDS. That is not equipment?

General SAVILLE. No, sir.

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Mr. ARENDS. Do you have the figure—an estimate—on complete cost?

General SAVILLE. Yes, sir.

Mr. ARENDS. Can you give it to us?

General SAVILLE. Yes, sir. There is approximately $85,500,000 for construction, real estate, and things of that order. There is approximately $26,000,000 for equipment, communications facilities, and things of that nature. There was $7,000,000 for the picket vessels which has been eliminated. It is not in current budgets.

Mr. DURHAM. Who eliminated that, the Budget Bureau.

General SAVILLE. Yes, sir.

Colonel MCCAUL. The Bureau of the Budget; yes, sir. They were eliminated from——

Mr. DURHAM. For what reason? Can you give us that?

COLONEL MCCAUL. Well, general economy, I believe, sir.

Mr. DURHAM. General economy?

Colonel MCCAUL. Yes, sir.

Mr. DURHAM. You may proceed, General.

General SAVILLE. There is a sum of approximately $46,000,000 which represents equipment and things of that nature that has been procured over past years, including during the war and things of that kind, which would be employed in the system.

The best over-all figure that could be given would be $161,000,000, exclusive of personnel costs, over-all—for everything—and that includes the picket vessels.

Mr. DURHAM. Certainly you have a lot of equipment that you carried over from the last World War that can be used in this whole program; is that correct?

General SAVILLE. Yes, sir.

Mr. DURHAM. What is your estimate on the value of that at the present time?

General SAVILLE. $42,250,000, sir.

Mr. DURHAM. In other words, you have already made an investment of $42,000,000 or more on this program, which has already been spent for equipment on hand?

General SAVILLE. Yes, sir. That is in terms of equipment but not in terms of the construction required to deploy that equipment to form a system.

Mr. DURHAM. Now, on your plan there, that you outlined before us—the air defense areas—can you tell us at the present time what period of completion does that stand at today?

General SAVILLE. Yes, sir.

Mr. DURHAM. With the background of the material that you have on hand.

General SAVILLE. Yes, sir. It is 2 out of 20.

Mr. DURHAM. Two out of twenty?

General SAVILLE. Yes, sir.

Mr. DURHAM. Only two?

General SAVILLE. Yes, sir. These are left over installations from the war. We have this one here [indicating] and we have this one here [indicating].

Mr. DURHAM. Well, when this is finally completed, do you feel that it would give complete protection as far as being able to provide warning sufficient to protect our national defense? Could they get

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through or would it be possible for them to get through, without our first being able to find them?

General SAVILLE. Sir, the only answer I can give to that is that there is no known technical means of providing absolute security or absolute warning—none of any kind. These things are relative only.

Mr. DURHAM. Well, based on former experience, of course, with the scope of your air defense from radar, you have been able to work out a fairly accurate idea as to how much this would cover. That is the way you planned this thing, I suppose?

General SAVILLE. Yes, sir. And this been considered by intelligence agencies looking at our strategic make-up from an enemy's point of view.

One of the items I think, sir, that is important is the fact that this is in balance. What we are doing here is in balance with what we are doing in other armed forces projects. And that was one of the concerns of the Joint Chiefs of Staff: To see that these things were all in balance.

Mr. DURHAM. Well, if you recall, this bill, of course, calls for offshore defense responsibilities also. Now, is that a question that you don't care to answer here at the present time? At the present time you are not operating off shore, or are you operating off shore?

General SAVILLE. No, sir; we are not operating any radar installations as part of the aircraft warning system for the United States today that are off shore. Such installations are in the program.

Mr. DURHAM. The whole idea of this defense command by radar will be projected out as far as possible and as far as we can make commitments?

General SAVILLE. I think, sir, as far as practicable, because it is an economic balance that controls. It is a technical point on the one hand—on that two-notch deployment which is what you require—and it is a question then of do you do it every place or don't you do it every place.

I think, sir, that that would be covered in the executive session when we show exactly where the coverage is and is not.

Mr. DURHAM. Are there any questions on this?

Mr. FISHER. May I ask a question?

Mr. DURHAM. Mr. Fisher.

Mr. FISHER. You referred to Alaska, General, and I assume that is a very strategic spot so far as preparedness against attack on this country is concerned?

General SAVILLE. It is a strategic spot, sir.

Mr. FISHER. Can you enlarge in the open hearing here on the importance and pressing need for better radar facilities in Alaska?

General SAVILLE. Yes, sir. I think that the problem in Alaska is essentially identical or comparable to the problem in the United States, with the additional factor of its geographic location and its isolation. On the one hand Alaska is an outpost and the United States is our zone of interior. This is where our war-making capacity exists. In that aspect Alaska might be considered as less important than the United States. On the other hand, its geographic location gives it a strategic importance that is not equaled by any of the geography that is in the United States.

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Mr. FISHER. Oh, yes, I understand. But from the standpoint of possible attack, Alaska is of extreme importance, isn't it?

General SAVILLE. Yes, sir.

Mr. FISHER. From the standpoint of preparing for a possible attack.

General SAVILLE. Yes, sir.

Mr. FISHER. Can you go into the matter of the inadequacy of radar facilities there?

General SAVILLE. Only to state, sir, that the radar facilities currently there are totally and wholly inadequte.

Mr. FISHER. Yes. Your plans included in this $85,000,000 request, I assume, include the Alaskan situation?

General SAVILLE. That is correct, sir.

Mr. FISHER. It happens that I was there this past October, and I know from talking to General Twining and General Armstrong and others that they regard the need for radar facilities of highest importance. Of course, you are familiar with that.

General SAVILLE. We share their view exactly, sir.

Mr. FISHER. I believe that is all.

Mr. HAVENNER. Mr. Chairman?

Mr. DURHAM. Mr. Havenner.

Mr. HAVENNER. Can you tell us at this time, General, how these air-defense areas in the continental United States were defined? On what basis were they set up, with those bounds?

General SAVILLE. They were set up generally on two bases; one of them was the requirements for the defense of the geographic area that was included in it, and the second one was the control over that portion of the forces that would likely be deployed in that area. Considered with that second factor is the factor of the enemy's capabilities.

I might say that those areas are drawn there with the tactical considerations of air defense in mind and have no other purpose excepting that one military-civil job. This is not a compromise with anything, in other words.

Mr. HAVENNER. You would be prepared to explain to the committee in more detail later, at perhaps some closed hearing, what the significance of those areas is from a geographical and territorial standpoint, from the standpoint of the areas involved?

General SAVILLE. Yes, sir, in detail.

Mr. HAVENNER. That is all, Mr. Chairman.

Mr. DURHAM. Any further questions of General Saville?

(No response.)

Mr. DURHAM. Now, General Saville, I would conclude from your statement there as to the completion of the radar network at the present time you consider it very hazardous so far as protection is standing at the present time or as it stands today?

General SAVILLE. Yes, sir.

Mr. DURHAM. It is not in very good shape?

General SAVILLE. Words would be impossible to describe how poor it is, Mr. Chairman. It is almost negligible.

Mr. DURHAM. At the present time these responsibilities are not laid down by law, in statutory authority, for any department of the defense; is that correct?

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General SAVILLE. I believe it to be generally correct, sir. The authorities stem from the National Security Act of 1947.

Mr. DURHAM. You have proceeded under that authority with what you have done so far?

General SAVILLE. That has been amplified then by the mutual agreement by the Joint Chiefs of Staff and concurred in by them, approved by the Secretary of Defense and issued by the Secretary of Defense as an authoritative directive by direction of the President. That is the fundamental authority today, as I understand it, for what we might call roles and missions.

I would like to say just one thing, sir. With respect to this program, we have been working in the closest possible coordination with the Army and with the Navy. There is no evidence of any kind of any interservice question with respect to this that I am aware of. It has been technical problems and not responsibility problems.

Mr. DURHAM. Well, today what kind of a research staff have you in the Air Force to carry out such program as this? Do you have the technical personnel, provided such a program was adopted?

General SAVILLE. The National Military Establishment through the Research and Development Board and through the various technical agencies, considers air defense as only one tactical function to be performed. I think that the technical agencies that are available, sir, are we might say essentially as food as the country can provide.

Mr. DURHAM. General, I did not ask you your background, but you might state to the committee just what your background is. You seem to be the expert on this.

General SAVILLE. With respect to this?

Mr. DURHAM. With respect to your training, education, and so on.

General SAVILLE. Yes, sir. I will give it to you as it bears on this particular problem.

I was an instructor of fighter aviation in the Air Corps Tactical School at Maxwell Field in 1932, when I began to specialize in this. We developed there the first ground observer and aircraft warning control system that there was developed, to my knowledge, in the world.

I then stayed on as a member of the Air Force Board, devoting my attention to air defense and matters of that kind.

I went from there to the Command and Staff School.

I went to the Office of the Chief of Air Corps, where I served as an Assistant Chief in the Plans Division.

I went from there as executive officer of the First Air Defense Command, that was set up as an experimental agency in the United States. While there I was over in England and participated in the Battle of Britain, where I was observing the operation of their system.

I then was called back to the United States where I was appointed Director of Air Defense in the Office of the Chief of Air Corps, in which capacity I was responsible for all of the Air Corps' fighter training, aircraft warning development, and things of that kind in World War II.

After we got organized, I went over to the Mediterranean theater, where I commanded the Twelfth Tactical Air Command in north Africa. Its job was an air defense job of the entire coast of north Africa.

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I was Chief of Staff to Air Marshal Tedder, who was Air Officer Commander in Chief of the entire theater.

I left that to command the Twelfth Tactical Air Command in Italy and I participated in the ground support mission there.

I was the air task force commander for the invasion of southern France.

And I ended my active war service as commanding general of the First Tactical Air Force.

Mr. DURHAM. General, I think you are well qualified to talk to us on the subject.

Mr. ARENDS. Mr. Chairman.

Mr. DURHAM. Mr. Arends.

Mr. ARENDS. General, would you care to state—on or off the record—how long you think it would take to perfect such an organization as set up, or equip the whole thing and get it going? You can state it either on or off the record if you care.

General SAVILLE. I would like to state that off the record if I may, sir.

Mr. ARENDS. Off the record? All right.

Mr. DURHAM. General, at the present time are you prepared to make any statement on the production rates of the planes that are being built for this type of service, or would that have to come from some other man in the Air Force? Could you give us a brief outline at the present time as to your production of planes? Are you producing planes for this type of work that you have outlined to us here?

General SAVILLE. The answer is "yes," sir. As to the exact rates—specific rates—I do not have that information available here, sir. I have a generalized picture of what it is. We can get that information for you. I can also state that the aircraft picture is in general consonance with the proposal here, which is a mechanical means of utilizing in effect the full capabilities of the aircraft that are programed and being produced.

Mr. DURHAM. Do we put radar on all planes today?

General SAVILLE. No, sir; we do not.

Mr. DURHAM. We do not.

General SAVILLE. No, sir.

Mr. DURHAM. Primarily, what type of plane do we use it on? If that is off the record, why, leave it off.

General SAVILLE. No, sir; I think that can be answered. We have an airplane for this type of purpose under discussion here that is called an all-weather fighter. That does have radar in it in order to have vision, effective vision, when the pilots can't see.

I might say that future aircraft, when we get—when it is technically possible—interceptor aircraft, will have radar in them, according to our plans.

Mr. DURHAM. During the last World War did you have anything to do with the procurement of this radar equipment for our services?

General SAVILLE. Not directly, sir. I was in the operational side. I had to do with numbers and with deployment. The procurement side; no, sir. That was done by the Signal Corps.

Mr. DURHAM. Anyone else have a question?

Mr. HAVENNER. Mr. Chairman.

Mr. DURHAM. Mr. Havenner.

Mr. HAVENNER. Can you tell us, without violating any of the security requirements, whether there is any plan for coordination between

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the air defense system of the United States and the air defense system of Canada, or Mexico, or both?

General SAVILLE. On the record I would like to say that the air defense command of the United States and the air defense command of Canada at that level enjoy the most splendid cooperation and coordination, sir. I might even say perfect.

Mr. DURHAM. Does that apply to all countries?

General SAVILLE. In our system, sir, we have not had occasion to go beyond the attempt to get close coordination with Canada.

Mr. DURHAM. Any further questions? Mr. Doyle?

Mr. DOYLE. General, assuming that the facilities or properties proposed to be purchased and developed under this bill, if authorized, were now in being, what would be the estimated annual cost of maintaining and operating the entire system?

General SAVILLE. Including the picket vessels, sir, and excluding personnel costs, which we have not computed, it would be, according to our best estimates, $11,450,000 annually.

Mr. DOYLE. Would that estimate include any normal expansion in peacetime?

General SAVILLE. No, sir.

Mr. DOYLE. I mean, would you have to add materially to the annual overhead?

General SAVILLE. There would have to be added to the annual overhead the nonsystematic replacement of the equipment with more modern equipment as it came out. We have no way, frankly, of estimating that, because it is in the hands of the scientists as to how fast they are going to move.

So we have included in this $11,450,000 only those things that we can measure or have any kind of a firm basis on, sir.

Mr. DOYLE. I notice on the chart there, of course, Alaska and the Aleutian area is included, but what division of the 20 is that included in—or is that a separate unit?

General SAVILLE. Sir, with your permission, we have for the off-the-record presentation——

Mr. DOYLE. I see.

General SAVILLE. The complete coverage and the plan for that.

Mr. DOYLE. General, you will understand my particular interest, possibly, in Alaska and the Aleutians when I say my own son in his lifetime in this war was a first lieutenant in the Aleutian Air Force—with the Army Air Force—and he told me before he was killed of the great benefit radar was to him as a pilot in the Aleutian campaigns.

General SAVILLE. Yes, sir. I would like to say, sir, that the installation of radar in the Aleutian chain was probably the most difficult technical job that the development of radar confronted any place in the world in World War II. I am confident that the application of radar was certainly one of the main reasons why the Battle of Britain was won and not lost and was directly responsible for saving thousands and thousands and thousands of lives. It was unfortunate that we did not have a system in being. We believe that system in being is an essential to our national security.

Mr. DOYLE. General, do you believe this program as outlined by you at the present time is flexible enough in case of an emergency to expand it to the point where you would like to expand it in case of an emergency?

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General SAVILLE. Yes, sir.

I would like to state that in designing this program there are certain difficulties. One of them is that we have to go out and put a piece of apparatus at a fixed installation. We do not want to go and then abandon that installation and go off some place else and go through that kind of foolishness. So we have very carefully considered in this deployment its expansion capabilities in war for one and two the future of the system as far as any of us can see.

We think that what we are providing here is the minimum required under the conditions now obtaining and is a perfectly sound framework for expansion in war.

Mr. DURHAM. What would you say as to what percentage or how far do you think this has come since your first experience with radar? Do you feel that there has been vast improvement made in this field even since the war? You should be able to know. You followed this question very closey

General SAVILLE. I think the word "vast" since the war indicates a degree that is not applicable. There have been material ones. Unfortunately, the rate of radar development has not for this application kept pace with other avenues. That is partly due to the inherent technical limitations in the radar.

We believe that the program, sir, for development as considered by the military and scientific agencies is sound and represents potential material development.

Mr. DURHAM. What has happened to the industries that were in this line of business? Were they more or less converted to some other type? Have they lost their technical personnel—any of it—during this interim period? Or have we missed the gun here and should we have done it in 1946?

General SAVILLE. No; I think the thing is the scientists are back up against basic problems that are not easy to solve and they have had to pursue different lines which are relatively slow. I don't believe that there is a fault attributable to any one thing. I think it is the position we have found ourselves in.

Mr. DURHAM. Do you think you now have the materials necessary to make up such an organization as you plan? Are you satisfied with that?

General SAVILLE. "Satisfied," sir, is a little too strong. We can effectively utilize to material advantage the equipment that we have available. If there were no limitation whatsoever, we would naturally not employ equipment we had left over from the World War.

Mr. DURHAM. Could you complete such a program and carry it out in a 2-year period?

General SAVILLE. With new equipment?

Mr. DURHAM. Yes.

General SAVILLE. No, sir.

Mr. DURHAM. How long would it take to carry out such a program?

General SAVILLE. In wartime?

Mr. DURHAM. Right now. I hope we are not going to be in a war.

General SAVILLE. May I answer that off the record?

Mr. DURHAM. Yes, General.

Mr. ARENDS. Mr. Chairman?

Mr. DURHAM. Mr. Arends.

Mr. ARENDS. General, this question pops in my mind. We read in the paper about jet-propelled bombers that skim across the United

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States at speeds over 600 miles an hour. They cover several thousand miles in a few hours. What can you do with radar with respect to detecting an enemy bomber with a speed capacity like that? Can you do something about intercepting something like that? If they move that fast, can you pick them up?

General SAVILLE. Yes, sir. Fortunately our job is not the defense of the United States against our own equipment.

Mr. ARENDS. No.

General SAVILLE. If it were, our job would be naturally more difficult than it is now. There is that point.

Second, any system where the elements are all integrated together, which is applicable to the kind of a national fabric that we have, is more effective than these local island defense businesses. So that our own problem is not—it is impossible of absolute solution, but it is more practicable to solve our problem better than it would be for some of the other people of the world, sir.

Mr. ARENDS. I thought that would present a problem. I did not know.

General SAVILLE. Oh, it does. It presents difficult technical problems to us in terms of these high altitudes and high speeds. Those do not arrive at a point where they present a bar and say "ineffective hereafter" in our case and in our problems.

Mr. DOYLE. Mr. Chairman?

Mr. DURHAM. Mr. Doyle.

Mr. DOYLE. General, I am interested in what extent, if any, technical schools, the university laboratories, and private engineering organizations have already contributed to the knowledge of the Army, Navy, and Air Force in this field of radar. Are they actively functioning with you in coordination with your efforts?

General SAVILLE. There is tremendous activity, sir, and without it we would be lost. The best scientific brains in the country are working on this with us.

Mr. DOYLE. Are they working under some arrangement or some authorization whereby they are being paid for working on it?

General SAVILLE. I think, in general, they are working two ways. One is through the agency of the Research and Development Board and the other is through contractual arrangements that are made between the respective services and these concerns to take on certain development and research projects and problems.

The third system, which I temporarily omitted, is that internally within the Air Force, we have operational analysts who are civilian scientific technicians who come internally in the system and give it an objective look without any of the obligations of rank and so on that go with a uniform. That is most helpful.

Mr. DOYLE. Do you feel the Air Forces are obtaining adequate cooperation and aid from the civilian experts in the field? I mean are we adequately encouraging that end of the development of radar?

General SAVILLE. I can't answer that question very well, sir, overall from the field of air defense and our peculiar things. I believe it is superior coordination and helpfulness that we are getting in that general field. I believe that the lines of development, that are now being pursued, and the lines of study are sound and correct insofar as we can see.

We do not know of any bets we are overlooking, sir.

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Mr. DOYLE. In the field of the Reserve Air Force and the National Guard Air Force, are they also coordinated with the active Air Force in this field?

General SAVILLE. As to the plan, they are very closely coordinated. As a matter of fact, the manning of our establishments is predicated upon the utilization of the reserve components to the maximum practicable to do the job and the using of regular troops only to the extent necessary to get the job done they can't do. They are not there on H-hour or D-day and things of that kind, but the whole philosophy is to use them to the maximum and not maintain and pay for day after day an enormous thing in being any larger than it has to be.

Mr. DOYLE. I say, General, the background of that question was, I had the pleasure of visiting the National Guard air unit in my own State of California when I came back. They were disappointed that they were not more promptly getting equipment and facilities in this field of radar study. Why is that? Why isn't adequate equipment available to the National Guard air unit so the boys have something they feel satisfied in working with instead of, for instance, making their own little pieces of equipment as I saw them doing?

General SAVILLE. There is a shortage of modern radar equipment. It is very expensive.

We have in this current plan and in conjunction with it provided modern radar equipment that is scheduled to go to those units. We do not believe that prior to the finalization of this plan that the situation was as healthy as it might be. We believe that the implementation of this whole plan has considered that and will materially improve that situation, sir.

Mr. DURHAM. Any other questions? Mr. Havenner? Mr. Fisher?

Mr. FISHER. No.

Mr. DURHAM. General, we thank you very much for coming up here this morning and giving us this statement.

If there are no further questions, the committee will adjourn until tomorrow morning at 10 o'clock to hear the three services in executive session on what they know about radar. We will hear what information they can give us.

We may have to call you back at a later date, General. We are going to hear you in executive session too.

General SAVILLE. Today, sir?

Mr. DURHAM. No, not today. We have some work here we have got to do this morning and we will call you back into executive session at a later date.

(Whereupon, at 11:20 a. m., the subcommittee adjourned.)

HOUSE OF REPRESENTATIVES,
DURHAM SUBCOMMITTEE OF THE
ARMED SERVICES COMMITTEE,
Saturday, February 12, 1949.

The committee met at 10 a. m., the Honorable Carl T. Durham (chairman) presiding.

Mr. DURHAM. The committee will come to order.

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General Saville, I believe yesterday when we closed the meeting we planned to take up this morning the matter of housing; the accommodations in connection with this program, and the cost of it. Will you go into that matter and give it to us?

STATEMENT OF GEN. GORDON P. SAVILLE—Resumed

General SAVILLE. Yes, sir.

With your permission, Mr. Chairman, I would like to show the committee just a brief plat plan of each kind of installation so the committee will know what the order of things is.

Mr. DURHAM. I would like to look at it.

(Discussion off the record.)

Mr. DURHAM. That cost covers everything?

General SAVILLE. Not the basic radar equipment itself, sir, but it does include all the housing construction, the barracks, the buildings, and things of that kind, and the cost is exclusive of the land itself. It does not include the access roads.

(Discussion off the record.)

General SAVILLE. These are typical, sir, and this is the area control center shown by the dots on the map in the first hearing.

Mr. DURHAM. How many of these control centers do you have to have in this entire program?

General SAVILLE. In the continental United States we have 10.

Mr. DURHAM. Who made these estimates of the cost of this? Were these estimates made by the Engineer Corps of the Army?

General SAVILLE. They were made by the air defense command staff and checked for general accuracy by the air installations staff. They were made, in the first instance, by the Engineer Corps officers who are on the staff of the air defense command. They were then checked by the air installations people and the estimates have been generally checked by the Office of the Chief of Engineers, who finds if they are generally in order.

The status of this at the moment is that the detailed drawings are in the process of preparation by the Chief of Engineers. It is impracticable to get a firm estimate until after those drawings are completed.

Mr. DURHAM. That includes housing for all the personnel assigned there?

General SAVILLE. Yes, except that these are operational installations. We provide no family housing of any kind at any of these installations.

Mr. DURHAM. You do not permit families on the sites?

General SAVILLE. No, sir. Dependents are not permitted on the sites.

Mr. DURHAM. You may proceed.

Mr. BROWN. You said that there would be 10 control centers constructed. I was under the impression there would be 20.

General SAVILLE. Yes. In the first meeting, if you will recall, there were eight Regular Air Force control centers that were put in for the eight original areas, plus two that had to be provided outside of this program because the National Guard had to come to those points from other places. The other installations making up the 20, the difference between the 10 and the 20, are training installations that are conducted under the National Guard training program.

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Mr. BROWN. They do not have centers?

General SAVILLE. Not of this type. They have centers based on training requirements rather than operational requirements.

One point on which I think that I might have left a misunderstanding: These figures that I have given are the manning figures that we propose to man with. At these stations that we are putting up we provide housing facilities on a minimum basis—and I am speaking of barracks, and so on—for the operating strength that would be required to operate the station if it were in full operation.

If you wish the exact number for which facilities are provided, I will have to get those added up, sir.

Mr. DURHAM. I think that we would like to have those, General. Give us the total personnel, the officer strength required and the enlisted personnel.

General SAVILLE. For which facilities are provided?

Mr. DURHAM. That is right.

(Discussion off the record.)

Mr. DURHAM. The entire program will have how many officers and enlisted personnel?

General SAVILLE. The over-all program calls for 9,399 Air Force, Regular Air Force personnel, and 13,200 National Guard, or a Reserve component personnel not on active duty.

Mr. DURHAM. How about your enlisted personnel? Do you not use the enlisted personnel of the National Guard also?

General SAVILLE. Yes, they come in as units; they would not come as individuals.

Mr. DURHAM. Have you done any training with the National Guard units?

General SAVILLE. Yes, we have done some, but we have not done very much. This is just getting organized, the National Guard program, and the Reserve program.

Mr. DURHAM. The plans are to train those National Guard units just as rapidly as possible when you get this program into being?

General SAVILLE. Yes; we have a plan for this present summer encampment for those National Guard units that have advanced in their individual training to a point where they can be given operational training. They will be trained in this operational system starting this summer.

Mr. DURHAM. Do you have a figure there broken down as to the cost of these housing units, the cost of housing at these stations?

General SAVILLE. Yes.

Mr. DURHAM. I would like that placed in the record.

General SAVILLE. The total estimated cost of the entire construction is $58,141,100.

Mr. DURHAM. Just what does that include? That includes everything; does it not?

General SAVILLE. Yes; all the construction at all these sites.

Mr. DURHAM. Do you have a break-down as to the station costs—the housing, public facilities, and so forth?

General SAVILLE. Yes; we have a complete break-down in any particular aspect that you might want.

Mr. DURHAM. If you do not have it this morning, you can place it in the record.

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General SAVILLE. Off the record.

(Discussion off the record.)

General SAVILLE. We have prepared what we could on the criteria used on an unclassified form, taking what might be considered as classified.

This covers in general the criteria or the standards upon which this construction is based.

Mr. DURHAM. Can that go into the record?

General SAVILLE. Yes.

1. In arriving at the estimated cost of the construction involved in the installation of the aircraft control and warning system in the continental United States, the following criteria were employed:

(*a*) General policy: In general construction should provide for minimum essentials consistent with operational requirements. The general policy will be to provide the necessary required facilities with a maximum over-all economy consistent with functional requirements, reasonable comfort, and sound architectural and engineering practice. Materials and construction methods will be utilized which will result in the lowest total costs, including both original and maintenance costs, for a life expectancy of 15 years.

(*b*) Modified mobilization type construction: All buildings at all A. C. and W. installations should be of modified mobilization type construction. Mobilization-cantonment-type construction will be modified to provide the following improvements:

(1) Concrete, cement-block, or cinder-block walls: acceptable alternates will be standard-wood-frame-sheathed walls with cement asbestos shingles, where warranted by local conditions.

(2) Asphalt shingle or built-up roofs.

(3) All interior walls of troop facilities to be sheathed with plasterboard and painted.

(4) All concrete floors except in service areas to be covered with linoleum, asphalt tile or rubber tile floor covering.

I might interject there to say the basis for this is the minimum that we believe we can hold our troops there without having them say, "Well, I just am not going to stay in the service." It is economy, on the one hand, and minimum housing facilities on the other. We cannot retain troops in peacetime in the barracks buildings which we did in wartime. You just cannot do it.

No special buildings will be provided for dispensaries or sub-PX facilities at the smaller installations. Space for these facilities will be provided in other buildings. Dispensary facilities will be located in other buildings at larger installations. Consideration will be given to the provision of a dispensary building at the air defense control centers. This consideration will be based upon the availability of this service from possible adjacent installations. Dispensary facilities at the control centers will be constructed only after individual justification and the approval of this headquarters for each site.

(*c*) Camouflage: Extensive and costly camouflage will not be provided.

(*d*) Central heating plants will be provided at all A. C. & W. sites in order to keep housekeeping personnel at a minimum and to increase efficiency. A separate heating system should be provided where economically desirable in buildings which are apart from the main camp-site area, such as radio transmitter and receiver buildings.

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3. Utilities: Optimum use will be made of public-utility services such as water supply, electric-power supply, gas supply, sewage and waste disposal, or other utility services required. At sites remotely located from public-utility services where it is impossible or not economically feasible to make use of these services, adequate electric power, water supply, and sewage-disposal facilities will be provided by the constructing agency. Utilities capacities, initially provided for smaller installations will be sufficient to care for an increase in population up to a total of war strength.

(*f*) Stand-by equipment: Stand-by Diesel-driven electric generators of a capacity sufficient to permit full and continuous operation of all vital elements of the installation will be provided. Generators will be furnished by the constructing agency. The size and functional lay-out of the various type power buildings will be obtained from the Watson Laboratories of the Air Matériel Command through contact with the Continental Air Command.

(*g*) Utilization of existing facilities: Maximum use will be made of structures and utilities which may exist at sites chosen for A. C. & W. stations where they meet the criteria prescribed, provided that such use will result in over-all economy and efficiency for the planned life expectancy.

(*h*) Space allowances: Troop housing and related facilities will be based upon the space allowances as set forth in WD Memo 210–20–7, Oct. 9, 1947, insofar as practicable. Dependent family housing will not be provided. At isolated stations, troop housing and bachelor quarters will be provided for all assigned and attached personnel. At all others, housing will be provided for all assigned and attached enlisted men, grades 4 through 7, and bachelor quarters will be provided for 50 percent of the assigned and attached officers and noncommissioned officers, grades 1 through 3. Individual accommodations within the bachelor quarters will normally be as follows:

(1) Officers, 240 square feet (two rooms in a standard BOQ) (provides 120 square feet for 100 percent officer strength).

(2) NCO's grades 1, 2, 3, 120 square feet (one room in a standard BOQ).

(*i*) Security: The entire area should be enclosed by a six-foot manproof fence with four-strand double-apron barbed-wire top.

(*j*) Roads: Required access roads to and service roads within the site area will be two-lane, class C highways, designed for traffic consisting principally of passenger cars and light trucks, 2½ tons or less, with an occasional vehicle having a wheel load equal but not exceeding 9,000 pounds.

Mr. DURHAM. Any questions?

Mr. DOYLE. Do I gather then that the nature of the housing in these isolated stations particularly has a direct relationship to your being able to hire trained men and keep them on the job at those stations?

General SAVILLE. Yes; I would say that the primary problem is that just in keeping competent people of having proper housing.

Mr. DOYLE. Then do I understand that the Congress must realize that, in proportion as you are able to provide reasonably satisfactory housing, just in that proportion will you be able to keep in the armed services, at least in this branch of the service, the high type of experts and trained personnel required?

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General SAVILLE. Yes.

Mr. DURHAM. Most of these boys are above high school; are they not?

General SAVILLE. Yes; a great many of them we have now have had some college, but the average, just the average American citizen today just will not and you cannot expect them to live in anything except adequate housing.

Mr. DOYLE. May I ask one other question: In these isolated stations, you do not expect to have men with their families?

General SAVILLE. Not on these stations. And at these stations we do not propose to make provision for military family housing. We try to locate them where they can have their families in the vicinity.

Mr. DURHAM. What else have you say, General?

General SAVILLE. I have nothing particular. I have a detailed break-down of the entire cost of each building.

Mr. DURHAM. Could you place that in the record?

General SAVILLE. No; these have been considered classified.

Mr. DURHAM. Suppose you leave a copy of that information with the committee.

General SAVILLE. With your permission, sir, I would like to give you a preliminary copy of the restricted document, which gives the estimated cost of the individual housing on the different types of sites, with the total cost divided by number of people.

Another is the complete break-down of the detailed costs for the different housing.

Another is the detailed estimates for the Alaska construction. All of these are classified.

Mr. DURHAM. Suppose you hand them to the clerk, and the clerk will take care of that part of it.

General SAVILLE. Yes.

Mr. DOYLE. May I ask one other question?

Mr. DURHAM. Yes.

Mr. DOYLE. Over how long a period of time, General Saville, has the staff been working on the project you gave to the committee this morning and yesterday?

General SAVILLE. I would say that this plan has been under active, really active investigation for approximately 2 years.

Mr. DURHAM. General, with respect to each of these projects, can you tell us exactly how that will be treated; will they be farmed out to industry, or does that come under you?

General SAVILLE. Yes; we are in it because we are the ultimate consumer in the military sense.

Mr. DURHAM. If you want some improvement on something that is accepted by the Army, what mechanics have you provided for getting that project out to say the Western Electric, General Electric, or whoever does it?

General SAVILLE. The procedure starting from scratch is this: We have a military problem, and we consult with the scientific agencies and various agencies in industry, and the Research and Development Board, as well as our own technical people. And when we arrive at a meeting of the minds as between ourselves on what we want or what we can get, then we start on the job.

Mr. DURHAM. Does the Research and Development Board have the right to pass on this project; is that correct?

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General SAVILLE. Yes. This is a project, in one aspect at least, this is a military project which is primarily the responsibility of the Joint Chiefs of Staff. From the scientific aspect and the equipment aspect, the Secretary of Defense has had the opinion of the Chairman of the Research and Development Board, and also we have asked the members of the Electronic Commission and the radar people, and all of the experts their opinions with respect to this over-all program before granting approval of the program, from the over-all viewpoint.

Mr. DURHAM. And how do you proceed from there on? Do you proceed by letting contracts, or do you do it with funds which have been allotted to you by the Army or for research and development?

General SAVILLE. No; there is money appropriated by the Congress annually, has been in the past, in which provision is made for development and research, in the research and development program, item by item, that represents not only the requirements that I have referred to here, but also the technical requirements in industry. The number of these requirements always exceeds the availability of funds. Therefore, we have to arrange them in the order of priority, which is done internally within the Air Force. And having established the priority the over-all priority, then those that survive that process are taken up first.

Mr. DURHAM. In this total cost that you gave us, there is no research and development cost?

General SAVILLE. No.

Mr. DURHAM. Then would you go out and make a contract, we will say, with one of the electric concerns, Western Electric or General Electric, for the project?

General SAVILLE. None whatsoever. This is installation.

Mr. DURHAM. Of course, in problems like this, the question always arises, "Have you got the money?" Otherwise, things like this can be slowed down considerably. Have you got all of the projects and research projects you think you need at the present time in this picture, so that the whole thing can go forward?

General SAVILLE. Yes; we think that the research and development that has been proposed by the armed forces in the over-all program for this particular aspect of the project involves two questions—one is in balancing it with the over-all picture, and the second is the question of imposing limitations on the development of the project.

Mr. DURHAM. Has the Navy had funds also that it can use for this research and development work?

General SAVILLE. Oh, yes. As a matter of fact, we meet jointly to avoid duplication in fields where that is possible; and in some of the research and development that is required, both by us and by the Navy, the Navy is actually meeting the cost.

Mr. DURHAM. You are dependent up to this time entirely on industry to produce this equipment under the present system, radar and so on? You do not develop them yourselves?

General SAVILLE. No; except the very minor developments within our own laboratory.

Mr. DURHAM. Just something like that, but I am talking about the over-all plan.

General SAVILLE. Yes; we rely on industry; we work with industry but we rely on industry, as we have done in the past; and, as will

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past research, we have to pay, because industry itself will not pay for it.

(Off-record discussion.)

Mr. DURHAM. Any further questions?

Mr. DOYLE. Do I correctly understand you, General, in saying that industry does not bear the cost of the experimental or development; is that your observation?

General SAVILLE. Mr. Doyle, I am a little bit out of my field here, but what I mean is that if we have developed something that has military application and has no application, we will say, in the civilian economy, then we have to bear the research costs, whether they do it within their own organization, or whether it is handled on a research basis under contract; we have to pay the costs; we cannot reap the direct fruits of the general industrial research that they carry out for themselves.

Radar in this application is more or less peculiar to the military services, and therefore calls for pretty much of a fundamental and basic research development program.

Mr. DOYLE. Then actually the Government bears the cost of research, and industry gets the manufacture of the facilities after the Government pays for the development of them. Does the Government get any allowance in making the exploratory expenditures?

General SAVILLE. I really do not know; I am not in the development and research field, so I am not qualified to speak on that. I think we would be far more apt to gain from the research than industry would on those things that have peculiar application to the military service. But I am not an expert and am not qualified to speak in that field.

Mr. DURHAM. Any further questions?

Mr. FISHER. I would like to ask you a question since you have referred to the use of radar: In the latter part of the war, were the so-called buzz bombs, and other familiar things that were used by the Germans in bombarding, classed by you as guided missiles?

General SAVILLE. No; they were not.

Mr. FISHER. They were not guided missiles?

General SAVILLE. They were missiles; they were projected, but there were no guided missiles.

Mr. FISHER. Did they attempt to make use of radar in trying to inform the forces so they could attack them?

General SAVILLE. Yes, against the V–1. For example, that was just another airplane; it did not have a pilot; it was just like another airplane; and I have seen some of them on the radar screen.

The V–2, on the other hand, is a different business, and it is different on account of the terrific speed at which it travels.

Mr. FISHER. They were able, however, to detect the approach of the V–2?

General SAVILLE. The V–1.

Mr. FISHER. The V–1?

General SAVILLE. Yes, the buzz bombs; the V–1 was a buzz bomb.

Mr. FISHER. And you say you were able to detect those.

General SAVILLE. You are talking about the V–1?

Mr. FISHER. Yes.

General SAVILLE. Yes.

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Mr. FISHER. Did they attempt to intercept them with fighters?

General SAVILLE. Yes; we shot down many of them.

Mr. FISHER. What was the experience; do you know?

General SAVILLE. No; I do not know the over-all record. I know in our own particular area where they came by we got some of them. We did not get them by ground-alerting the fighters to go up and make an interception, however; but in the area in which I was located, the battle area, we had aircraft in the air a great deal of the time, and when they were in the air we were able to shoot down quite a few of them.

Mr. FISHER. It was not possible then to dispatch the plane from the ground to intercept them?

General SAVILLE. That is correct, in the distance they had to work

Mr. DURHAM. Are there any further questions? Do you have anything else, General?

General SAVILLE. No. We will be glad to provide the committee with any information that might be helpful.

Mr. DURHAM. We appreciate the information you have given us Do you have anything, Mr. Brown?

(Off-record discussion.)

Mr. DURHAM. Are there any further questions, Mr. Doyle?

Mr. DOYLE. No further questions.

Mr. BLACKNEY. I have nothing further, Mr. Chairman.

Mr. DURHAM. If there is no objection, the answers containing unclassified information in reply to the questions submitted to the services concerning the proposed legislation are hereby made a part of the record. If there are no further questions the clerk will proceed to read the bill.

LAND-BASED AIR CONTROL AND WARNING SYSTEM

UNCLASSIFIED ANSWERS TO QUESTIONS (FEBRUARY 7, 1949) OF THE HOUSE OF REPRESENTATIVES COMMITTEE ON ARMED SERVICES

1. Why is it proposed that the authority to establish an air-warning system shall be granted to the Secretary of the Air Force rather than to the Secretary of Defense and/or the Secretaries of all Departments of the National Military Establishment?

A. The Air Force is specifically charged by agreement of the Joint Chiefs of Staff, approved by the Secretary of Defense, and by directive of the President with responsibility for the air defense of the United States.

3. (a) What are the air-defense responsibilities of the Department of the Air Force? Of the Army? Of the Navy?

Emanating from the Security Act of 1947, all services have been assigned responsibilities for air defense as follows:

(*a*) United States Air Force:

(1) To be responsible for defense of the United States against air attack in accordance with the policies and procedures of the Joint Chiefs of Staff.

(2) To formulate joint doctrines and procedures, in coordination with the other services, for the defense of the United States against air attack, and to provide the Air Force units, facilities, and equipment required therefor.

(3) To develop, in coordination with the other services, doctrines, procedures, and equipment for air defense from land areas, including the continental United States.

(*b*) United States Navy:

(1) To provide sea-based air defense and the sea-based means for coordinating control for defense against air attack, coordinating with the other services in matters of joint concern.

NOTE.—The numbering of questions and answers follows that used in the original query.

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(2) To provide naval (including naval air) forces as required for the defense of the United States against air attack, in accordance with joint doctrines and procedures approved by the Joint Chiefs of Staff.

(c) United States Army:

(1) To organize, train, and equip Army antiaircraft artillery units.

(2) To provide Army forces as required for the defense of the United States against air attack, in accordance with joint doctrines and procedures approved by the Joint Chiefs of Staff.

(b) In what law or laws or what documents, if any, are these responsibilities specifically laid down?

A Secretary of Defense paper, entitled "Functions of the Armed Forces and the Joint Chiefs of Staff," dated April 21, 1948, issued by the Secretary of Defense at the direction of the President.

4. (a) Why does the language of the bill limit the Secretary's authority to the development of "Land-based Installations and Facilities"?

Statutory authority already exists for the development and procurement of ships, planes, radars, etc., but this bill primarily permits the development of "land-based installations and facilities" in a program of such scope that statutory authority is necessary.

(b) Is there such a thing as ship-based or airborne facilities for warning of the approach of enemy aircraft?

Yes, both ship-based and airborne.

7. (a) Are any of the other services developing suitable planes and radar for employment in airborne early warning missions?

Yes, the U. S. Navy.

7. (b) If so, and if the answer to question 5 is negative, why has the Air Force decided not to pursue the development of this method also?

To avoid duplication of effort, in the assured knowledge that the Navy, in accordance with the recommendation of the R. & D. Board, is pursuing this development in top priority.

8. What is meant by the phrase "Air warning and control"? What type of "control" does this have reference to?

Control of all active defense forces employed in the air defense of the United States.

9. Is this bill intended to provide a permanent long-range system of installations or is it merely for the purpose of setting up a temporary interim system?

A permanent long-range system.

10. If the answer to question 9 is in the first alternative, why is authority sought to construct, install or equip "temporary" public works?

Certain of the facilities planned are temporary in nature.

11. Set forth verbatim the language of the three statutory sections mentioned in section 1 of the proposed Air Force bill and explain in detail precisely why it is desired to avoid the effect of these provisions.

R. S. 1136

"Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropriation for the same, except when constructed by the troops; and no such structures the cost of which shall exceed $100,000, shall be erected unless by special authority of Congress. It shall be the duty of all officers of the United States having any of the title papers (properly purchased, or about to be purchased, for erection of public buildings) in their possession, to furnish them forthwith to the Attorney General. No public money shall be expended until the written opinion of the Attorney General shall be had. (R. S. 1136, 10 U. S. C. 1339, as amended by Public Law 626, 80th Cong., sec. 4 of the act of June 12, 1948)."

Comment.—This provision of law prohibits construction of any permanent public works unless detailed estimates have been submitted to Congress and approved by a specific appropriation and prohibits all construction by this Department exceeding $100,000 in value unless there has been a specific authorization for each such

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project. It would be necessary to obtain specific authorization for each project under this act. It would also be highly desirable to waive this Revised Statute inasmuch as most of these installations would be of restricted character and it would not be advisable to set forth the location and cost in the interest of security.

R. S. 3648

"No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper, to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they may be entitled cannot be regularly effected." (R. S. 3648, 31 U. S. C. 529).

Comment.—This provision of law provides that no payments for services shall be made until after such service shall have been rendered unless specifically permitted by the appropriation concerned. Waiver of this Revised Statute would permit advances of funds to contractors to acquire materials, equipment, to recruit and pay employees, etc. This is particularly important to secure the services of local contractors at isolated locations and small communities.

R. S. 3734:

No money shall be paid nor contracts made for payment for any site for a public building in excess of the amount specifically appropriated therefor. No money shall be expended upon any public building until after sketch plans showing the tentative design and arrangement of such building, together with outline description and detailed estimates of the cost thereof shall have been made by the Public Buildings Administration (except when otherwise authorized by law) and said sketch plans and estimates shall have been approved by the Federal Works administrator and the head of each * * *"
(R. S. 3734, 40 U. S. C. 259, 267).

Comment.—This law provides that no payment for sites shall be made in excess of the specific appropriation therefor. It provides that sketch plans must have received prior approval prior to expenditure of any funds for construction of public buildings. This is waived in the interests of time and to provide for the possibility of increased costs beyond the limit of the specific appropriation, otherwise the estimates would have to include provision for this contingency, or, it might be necessary to request deficiency appropriations.

12. (a) Is it contemplated that the secretary shall have authority to acquire lands or other interests in real property, without reference to the Congress at the time of such acquisition, once the present bill has become law?

Yes; subject to the provision of H. R. 2010 if enacted into law.

12. (b) Is it the view of the Air Force that acquisitions of land or rights or interests therein under the authority of this bill will or will not be subject to the provisions of H. R. 2010 now pending before the Congress, in the event that the latter bill becomes law?

Subject to the provision of H. R. 2010, with the expectation that administration procedures would be worked out to permit the chairman (or other executive agency) of the committees to act for the committees in emergency when Congress was not in session.

13. Why does the bill authorize the Secretary to acquire "The temporary use" of lands, et cetera, if it seeks to establish a permanent air-defense system?

In order to avoid paying for all land before construction and other allied activities can begin.

*14. Similarly, why does the bill authorize the Secretary "to place * * * temporary improvements thereon whether such lands are held in fee or under lease, or under other temporary tenure * * *"?*

The wording is "to place permanent or temporary". Some of the facilities may be "temporary" in nature, rather than "permanent".

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15. Set forth verbatim the text of the two statutory sections cited in section 2 of the proposed Air Force bill, and explain the application thereof to the authority sought herein.

Not applicable to present bill.

16. Does the language of this section envisage that moneys will be appropriated generally for the purposes of this act, without reference to the specific installations or facilities upon which they are to be expended?

Yes.

17. The bill contains the following language: "Moneys so appropriated shall remain available for obligation until expended."

(a) Will there by no limit upon the length of time such moneys may remain available?

The wording "when so specified in an appropriation act," is included in the bill under consideration. It is assumed that time limits, if any, will be established by the appropriation.

(b) Will there be any restriction or limitation as to the particular projects or types of projects upon which these moneys may ultimately be expended, that is, other than the general limitation that the expenditure be within the broad framework of "the purposes of this act"?

Restrictions, if any, will be as specified in the appropriation, and as imposed by the provisions of H. R. 2010 if enacted into law. In addition, the executive procedure for release of moneys by the Bureau of the Budget would be applicable.

*18. In view of the language of section 1 which authorizes "the Secretary * * * to establish or develop * * * installations and facilities, by the construction, et cetera, of public works * * * ", why is it necessary to provide in section 3 that appropriations may be used "for expenses incident to construction, etc.?"*

This has been eliminated from the bill under consideration.

20. (a) Will the program contemplated under this bill provide a complete air warning and control system fully equipped with the necessary installations and equipment to enable it to perform with reasonable adequacy the missions of air warning and interception in the event of war?

The program contemplated would provide an aircraft warning and control system in being, consistent in adequacy with other elements of the armed forces.

(b) To what degree is it anticipated that expansion in the scope and cost of the system will be necessary in war time?

The system would, like all other military activities, and in balance therewith, be expanded considerably in war. The degree of this expansion would depend upon the nature of the war, the time it occurred and many similar factors.

21. (a) Is the present program firm?

Yes.

(b) Is the scope of this program identical in terms of cost, number of installations and other key factors to that of the program proposed a year ago?

No.

(c) For how many months has the present program been firm?

Has been approved by the Joint Chiefs of Staff since October 20, 1948.

22. (a) Have there been changes in the cost estimates since this program was initially conceived?

(b) If so, give the original estimates and the new estimates at each succesive stage of revision, and give break-downs in each case.

(c) What are the reasons for such revisions as have been made to date in the character or scope of the program?

Changes have been made in the cost estimates since the current program was initiated; however, the over-all cost of the program has not altered from the original figure.

Rising construction costs have required that the programing for acquisition of real estate be changed from the initial concept of outright purchase to a plan of leasing land with option to buy.

Outright purchase of land was originally figured at $2,400,000.

Current leasing cost of all lands amounts to $288,000 per year.

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The difference between these figures is an indication of the rise in construction cost estimates for the program involving $85,500,000.

24. Is there any substantial value in mere aircraft warning in and of itself alone, that is, unless it is put to advantage in directing interceptor fighters to the approaching enemy aircraft?

There is substantial value to aircraft warning in and of itself, aside from the direction of interceptors. It permits the alerting of other defense forces, both military and civilian, and allows the execution of other measures oriented on the enemy air attack. It is considered of particular and peculiar value to civil defense activities.

25. Can an aircraft warning and control system frustrate completely any and every possible enemy attack?

No. An aircraft control and warning system in itself possesses no capability to frustrate any possible enemy attack. Its value lies in the greatly increased capability it gives military and civil defense measures oriented on the enemy air attack.

26. Can an aircraft warning system prevent a sudden surprise attack if our own interceptor planes are not warmed up, manned and on the line, ready to take off at an instant's notice, 24 hours a day, every day?

No. An aircraft warning system is designed to obviate the necessity for readiness "to take off at an instant's notice, 24 hours a day, every day." It should provide an appreciable time interval for effective military and civil measures to be taken.

29. (a) Will antiaircraft artillery play any part in the defense system envisaged in this legislation?

Yes. Antiaircraft artillery will be an integral part of the air-defense system envisaged for the continental United States, and this legislation permits the installation of an aircraft warning system which enhances antiaircraft artillery capabilities.

(b) Will the full utilization of the capabilities of this system require the augmentation of existing antiaircraft defenses?

Requirements for antiaircraft artillery for employment in the air-defense system is determined in conjunction with the determination of requirements for fighter forces; this aircraft control and warning system is designed to permit full exploitation of the capabilities of both forces.

30. (a) Will the system to be authorized by this bill be of any avail whatsoever to protect the United States against enemy long-range strategic bombers?

The system to be authorized is designed to provide a defense against enemy long-range strategic bombers; total protection with known weapons is an impossibility.

(b) Is it possible to stop the enemy's strategic bombers in a sustained air offensive?

It is possible to stop some, but not all, of the enemy's strategic bombers in a sustained air offensive.

30. (c) Even assuming that some of them can be intercepted, it is not virtually a certainty that most of the strategic bombers in any given mission will reach their targets?

It is not a certainty that most of a likely enemy's strategic bombers in any given mission will reach their targets in the United States; the military and civil measures made possible by an aircraft control and warning system with defense forces adequate to the situation will increase greatly the cost to the enemy to achieve a desired result.

36. (a) How far out would it be possible to extend these early warning "Frontiers"?

It is *possible* to extend these frontiers to great distances but depends on access to the necessary land or sea areas involved. The practical distance to which these frontiers should be extended depends upon the expenditure of effort involved, balanced against the value, to the defended area, of the information furnished.

(b) Would it be possible to employ them as pickets to give advance warning of enemy aircraft, somewhat in the manner that Japan used fishing vessels off our coast to furnish intelligence regarding movements of our forces?

It might be possible but is not considered feasible.

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37. Is there any danger that fixed land-based installations may soon become obsolete because of improvements in radar equipment, change of suitability of location because of increased air speeds, or because of other changes in technology on tactics?

The planned aircraft control and warning system will "not soon become obsolete;" the selection of sites is being made to permit their effective utilization for a long time in the future, though perhaps with different types of equipment. The system is oriented on the vital industrial and war-making potentiality of the Nation, the location of our major cities, concentrations of skilled personnel, and other vital targets changes very slowly if at all.

41. *(a) How does the feasibility of using mobile land-based radar equipment compare with that of establishing fixed installations?*

Poorly. It is not considered practical to use mobile land-based radar equipment in the permanent air defense of the United States, except in the gap-filling capacity.

(b) Would the former provide a desirable element of flexibility that may be lacking in the fixed installations?

The mobility would not contribute to the effectiveness of the air defense system as the installations are oriented on populated centers and important industrial areas which are considered potential target areas. A mobile element is provided by the Air National Guard, aircraft control and warning troops. Additional mobile stations will be provided to reinforce the permanent stations in the event of war.

42. *(a) Is there any similarity between the functions performed by a land-based air warning and control system in directing fighters against enemy planes and those performed by the fighter director group aboard an aircraft carrier?*

The objective of the aircraft control and warning system and the fighter director group aboard an aircraft carrier is identical as to the execution of interception of enemy planes by fighter aircraft—both seek the destruction of the enemy. The contrast in the requirements to be met by the two systems lies in the concentrated target afforded by a naval task force compared with the multiplicity and widespread character of vital targets in the continental United States.

(b) Is not the object in both cases the same, i. e., the fighters onto the enemy?

Yes.

44. *(a) Will the air force of other armed services be able to provide enough technical personnel, including radar operators and technicians, communications experts, et cetera, to assure effective operation in peacetime of the proposed system?*

All services are having difficulty in obtaining and holding necessary qualified personnel. Training programs have been expanded, however, and it is not believed that the personnel problems involved in the aircraft control and warning program envisaged by this legislation, are insufferable.

(b) What is the estimated number of personnel which will be required to permit full and effective operation of the system? Give break-downs between military and civilian and specialties required.

The aggregate strength of USAF personnel required is 9,399 augmented by 13,200 Air National Guard troops in event of a national emergency. The number of civilian technicians is 150.

(c) Would it be necessary to substantially increase this number in the event of war?

In the event that it becomes necessary to expand the system in the event of war, the number of personnel will increase accordingly.

45. (a) Will the system to be provided under this bill fully utilize the existing and potential capabilities of all equipment being developed by the Army and Navy, as well as by the Air Force, for detection, early warning, and interception of approaching enemy aircraft?

Yes; at such time as their integration into the system is justified.

(b) Does it fully utilize available methods and equipment, other than shore-based, for the detection and early warning of approaching enemy aircraft? In other words, does it utilize the capabilities of ship-borne detection equipment to the maximum extent possible?

It contemplates the utilization of air-borne and ship-borne detection equipment when and where justified.

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46. Has any consideration been given to the initial establishment of a token syste which would permit careful evaluation in actual practice of the techniques upon whic this system is based, prior to committing the Nation to the expense of the over-a program?

Careful consideration has been given to the initial establishment of a toke system for evaluation purposes, and much necessary evaluation has already bee made. The present proposed program, if delayed for further testing by toke systems might always be implemented "next year," because research and develo ment is a continuing and advancing science, with something better always for seen in the future. It is considered that further delay in the installation of a operational aircraft control and warning system entails unwarranted risk Tests of limited scale will not add to our present knowledge.

47. (a) How much money is included in the budget for (a) aircraft early warni and (b) control and interception, and (c) air defense generally, for:

(i) Army?
(ii) Navy?
(iii) Air Force?

(b) Give break-downs in above figures.

As indicated in the reply to question 19, the funds included in the 1950 budg estimate for (a) aircraft early warning and (b) control and interception equipme is $26,628,000. The Navy radar picket vessels will cost approximately $7,000,0 for conversion.

(c) Do these figures include the costs of manning and maintaining antiairc defenses, housing at remote stations, maintenance of fighter aircraft, and all ot operational and housekeeping costs?

The answer to the general question as to funds will require a lenghty study the over-all budget for the National Military Establishment since the direct a indirect costs of air defense extend throughout the entire budget structure of t services.

49. (a) What will be the ultimate total annual cost of running the air warning a and control system? How will this be divided between the services?

The maintenance cost of the control and warning system as indicated in answ to question 23 is $11,450,000. This program is supported by Air Force fun

49. (b) Does this figure include all related housekeeping costs and also the cost support furnished by each service?

No.

(c) Does it include the cost of maintaining troops for the local defense of th warning installations in remote and unprotected areas, so as to insure that they a not be captured or neutralized by enemy action prior to the launching of an air att on the United States?

Interior guard only.

50. Why is it not proposed to acquire permanently in fee simple, at this time, of the lands required for this system?

If installations are contemplated outside the United States, provisions must made in event sites for installations cannot be acquired in fee.

51. List all the differences between H. R. 314 and the proposed new bill. W led to the drafting of the new bill and why was it necessary to change the provisi embodied in H. R. 314?

The proposed bill authorizes the Secretary of the Air Force to place permane improvements upon lands held under lease or under temporary tenure. H. 314 does not contain this authorization.

H. R. 314 authorizes the Secretary of the Air Force to acquire lands and righ pertaining thereto without regard to sections 355, 1136, 3648, and 3734, Revis Statutes, as amended. This authorization is not contained in the proposed b

The proposed bill authorizes the construction, installation and erection of fa ities, buildings, et cetera, without regard to sections 1136, 3648, and 3734, Revis Statutes. This authority to except the aforesaid Revised Statutes is not co tained in H. R. 314.

Section 3 of H. R. 314 authorizes to be appropriated such sums of money may be necessary to carry out the purposes of the act with provisos that t monies so appropriated shall remain available for obligation during the fis

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year in which appropriated and the four fiscal years thereafter. It further provides that the Secretary may expend unobligated balances of appropriations currently available to the Department, and further provides that any work undertaken under this authorization may be prosecuted by direct appropriations, or by both direct appropriations and continuing contracts, subject to the availability of subsequent appropriations. The proposed bill contains simply the following appropriation language:

"There is hereby authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated, such sums as may be necessary to carry out the purposes of this act, and when so specified in an appropriation act, such amounts shall remain available until expended."

The new bill, as presently written, reflects the latest thinking of the National Military Establishment and the Bureau of the Budget. The provision authorizing the building of permanent structures on leased land is believed essential for two reasons: First, it will permit the acquisition and use of land which might not be available for purchase, and second, it will lower the initial cost of the system.

The Bureau of the Budget suggested that the appropriation section be changed to merely authorize the appropriation of such sums of money as are necessary to carry out the purposes of the Act, and that when so specified in the appropriation act, such money should remain available until expended. The Bureau of the Budget further felt that the authority to acquire lands and erect structures thereon prior to obtaining the approval of title by the Attorney General was not essential to this program.

Mr. BROWN (reading): A bill to authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Air Force is hereby authorized to establish and develop within and without the continental limits of the United States in fulfilling the air defense responsibilities of the Department of the Air Force such land-based air warning and control installations and facilities, by the construction, installation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, utilities, and access roads, and to provide for necessary administration and planning therefore, without regard to sections 1136, 3648, 3734, Revised Statutes, as he may seem necessary in the interest of national security.

Mr. DURHAM. What are those statutes; 1136, 3648, and 3734?

Mr. BROWN. I have those right here, Mr. Durham. I think I might provide each member with a copy. I think it is on page 3, sir. Those are given right there. The text of each of those statutes is set forth at the bottom of page 3, sir.

Mr. DURHAM. 1136 is a restriction on the building of barracks: is that right?

Mr. BROWN. Well, sir, that is a restriction on building any structures the cost of which would exceed $100,000, except by special authority of Congress. In other words, that statute would require that before you could build any permanent barracks or quarters or permanent buildings of any type, you would have to come in and get specific authority. By excluding that provision from the operation of this act, the Department would have the authority to go ahead with the program without having to come back each time. Is that correct?

General SAVILLE. That is correct. In addition, I think there is a security provision there. In other words, if we have to get authority specifically each time, it would have to be stated that so many dollars would be for such and such an installation. We are trying every way we can to avoid that.

Mr. DURHAM. What is 3648?

Mr. BROWN. That provides that you cannot make any advance of public money unless the appropriation specifically authorizes it. You

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cannot make any advance payments under that statute. You have to wait until the goods are actually delivered and the services performed before you can advance any money.

The Air Force states here at the bottom of page 4 the reasons for that. They want to be in a position to make advances of funds to contractors to acquire materials, equipment, to recruit and pay employees, et cetera. They point out that it is particularly important in the case of local contractors at isolated locations.

Mr. DURHAM. Do you think this is absolutely necessary, General?

General SAVILLE. Yes, sir.

Mr. DURHAM. To have this authority?

General SAVILLE. I am not an expert on this, sir, but I am informed by experts that it would be a great inconvenience and would cause a lot of difficulty and increase the cost of this if this provision were not in here.

Mr. DURHAM. What is 3734?

Mr. BROWN. That is that no money shall be paid nor contracts made for payment for any site for a public building in excess of the amount specifically appropriated therefor. No money shall be expended upon any public building until after sketch plans showing the tentative design and arrangement of such building, together with outline description and detailed estimates of the cost thereof shall have been made by the Public Buildings Administration. Such sketch plans and estimates shall have been approved by the Federal Works Administrator, and so forth.

The waiver of this is sought in the interest of time and to provide for the possibility of increased costs beyond the limit of specific appropriations. Otherwise, estimates would have to include provision for this contingency, or it might be necessary to request deficiency appropriations.

Mr. DURHAM. Do you think you need this authority, General?

General SAVILLE. Yes, sir.

Mr. DURHAM. All right. If there are no amendments to that section, read section 2.

Mr. BROWN (reading):

SEC. 2. In furtherance of the above, the Secretary of the Air Force is authorized to make surveys and to acquire lands and rights pertaining thereto or other interests therein, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, and to place permanent and temporary improvements thereon whether such lands are held in fee or under lease, or under other temporary tenure.

Mr. DURHAM. If there are no amendments to this section, read section 3.

Mr. BROWN (reading):

SEC. 3. There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums as may be necessary to carry out the purposes of this act, and when so specified in an appropriation act such amounts shall remain available until expended.

Mr. DURHAM. Are there any amendments to this section?

Off the record.

(Discussion off the record.)

Mr. DOYLE. I move that the bill be amended to contain the language indicated.

Mr. DURHAM. That will go in as section 4, is that right?

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General SAVILLE. That is my understanding, sir.

Mr. DURHAM. Is that correct, Mr. Brown?

Mr. BROWN. Yes, sir; that is correct, sir.

Mr. DURHAM. If there is no objection to this provision, it will be inserted as section 4.

Mr. BROWN. Do you want me to read it, sir?

Mr. DURHAM. Read the section.

Mr. BROWN (reading):

SEC. 4. The provisions of this act shall be subject to the duties and authority of the Secretary of Defense and the departments and agencies of the National Military Establishment as provided in the National Security Act of 1947, Public Law 253, Eightieth Congress.

Mr. DURHAM. Is there any objection to this provision?

(No response.)

Mr. DURHAM. If there is no objection to the bill, we shall report it favorably.

(No response.)

Mr. DURHAM. The committee is adjourned.

(Thereupon, at 11:05 a. m., Saturday, February 12, 1949, an adjournment was taken.)

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[No. 16]

SUBCOMMITTEE HEARING ON H. R. 1748 AND S. 630, TO AMEND SECTION 19 OF THE ACT OF AUGUST 13, 1946 (60 STAT. 1057), SO AS TO REMOVE THE UPPER-AGE LIMIT FOR APPOINTMENT TO COMMISSIONED GRADE IN THE SUPPLY CORPS OF THE NAVY

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 3,
Monday, February 14, 1949.

The subcommittee met at 10:00 a. m., Hon. Carl T. Durham subcommittee chairman) presiding.

Mr. DURHAM. The committee will come to order.

We have before us the bill H. R. 1748, which was introduced by me at the suggestion of the chairman of the Armed Services Committee. (H. R. 1748 is as follows:)

[H. R. 1748, 81st Cong., 1st sess.]

A BILL To amend section 19 of the Act of August 13, 1946 (60 Stat. 1057), so as to remove the upper-age limit for appointment to commissioned grade in the Supply Corps of the Navy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 19 of the Act of August 13, 1946 (60 Stat. 1057), as amended, is hereby further amended to read as follows:

"SEC. 19. No person shall be appointed to a commissioned grade in the Supply Corps of the Navy who will be less than twenty-one years of age on July 1 of the calendar year in which appointed and until his physical, mental, and moral qualifications have been established to the satisfaction of the Secretary of the Navy."

Mr. DURHAM. We also have the bill S. 630, the companion bill. (S. 630 is as follows:)

[S. 630, 81st Cong., 1st sess.]

AN ACT To amend section 19 of the Act of August 13, 1946 (60 Stat. 1057), so as to remove the upper age limit for appointment to commissioned grade in the Supply Corps of the Navy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 19 of the Act of August 13, 1946 (60 Stat. 1057), as amended, is hereby further amended to read as follows:

"SEC. 19. No person shall be appointed to a commissioned grade in the Supply Corps of the Navy who will be less than twenty-one years of age on July 1 of the calendar year in which appointed and until his physical, mental, and moral qualifications have been established to the satisfaction of the Secretary of the Navy."

Passed the Senate February 8, 1949.

Attest: LESLIE L. BIFFLE, *Secretary.*

Mr. DURHAM. Who is here to testify?

Captain MCDILL. Captain McDill of the Judge Advocate General's Office of the Department of the Navy.

Mr. DURHAM. Captain, you may proceed.

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STATEMENT BY CAPT. A. S. McDILL, OFFICE OF THE JUDGE ADVOCATE GENERAL, UNITED STATES NAVY

Captain McDILL. The bill is a new one. That is to say it has had no previous legislative history in past Congresses or this Congress at this time. It would seek to amend a law which requires that appointments as assistant paymaster in the Navy be made from persons not less than 21 nor more than 25 years of age.

There are some people in college now and at the Naval Academy who, because of late entrance to school by reason of the war period will be more than 25 years of age when they complete their schooling and are ready for appointment. This limitation of 25 years of age would preclude their appointment as assistant paymasters in the Navy.

We are seeking to remove that limitation. It is inconsistent with other provisions of law regarding appointments in the Supply Corps and to the Staff Corps in the Navy.

Mr. SASSCER. With reference to the 21 years of age requirement, this is not new in any way, is it?

Captain McDILL. No, sir.

Mr. SASSCER. The proposed bill just removes the 25 years of age limit?

Captain McDILL. Well, 21 years is the lower minimum and 25 years is the upper maximum at present for appointment as a paymaster in the Navy.

Mr. DURHAM. Why was the limitation of 25 years of age imposed Captain?

Captain McDILL. That was written into an old act. I have not the legislative history of the reason for that. It was at the request of the Bureau of Supplies and Accounts to avoid having to appoint, as it were, qualified applicants—people over 25 years of age as assistant paymasters. They would be out of line in age with similar officers in the grade of ensign, which is the grade in which you are appointed—beginning appointment—in the Supply Corps.

We have officers more than 25 years of age who can transfer to the Supply Corps. We have officers who are in the line of the Navy in the grade of ensign with a couple of years' service whose eyes fail, but not sufficiently to preclude appointment. They can be appointed by initial appointments in the Navy in this corps. However, this corps is restricted at present to people under the age of 25.

Mr. SASSCER. Captain, do you have any appreciable number of Naval Academy graduates going into the Supply Corps in this capacity?

Captain McDILL. At present we have a graduating class in which about 25, it is estimated now, will transfer to the Supply Corps.

Mr. SASSCER. You use the word "transfer." A moment ago you said you could transfer officers from other branches.

Captain McDILL. From the line in the Navy.

Mr. SASSCER. But by using "transfer" in the sense you are now using it, you mean appointed?

Captain McDILL. Appointed and initial appointment from the Navy in the Supply Corps is regarded as initial appointment in the Navy or Staff Corps. I do not know how many of that group are

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over 25 years of age, but the average age of those graduated from the Naval Academy now is very close to 24.

Mr. SASSCER. It would seem it is a matter which could well be handled administratively in the Navy.

Captain McDILL. In the case of Naval Academy graduates, that is true, sir. They could be commissioned——

Mr. SASSCER. I mean if this bill is passed, the appointment of the older personnel can be handled administratively in the Navy without that restrictive provision.

Captain McDILL. Yes, sir.

Mr. SASSCER. I suggest that the bill be reported.

Mr. DURHAM. Any further objection?

Mr. SASSCER. I move that the bill be favorably reported.

Mr. DURHAM. Without any objection, the bill will be reported favorably.

Do I hear a motion to substitute the bill S. 630 for this bill?

Mr. SASSCER. I move that S. 630 be substituted for H. R. 1748, and that it be reported favorably.

Mr. DURHAM. Without objection, it is so ordered. S. 630 is favorably reported.

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MAR 10 '49

[No. 17]

SUBCOMMITTEE HEARING ON H. R. 1793 AND S. 279, TO AUTHORIZE THE ADVANCE ON THE RETIRED LIST OF LT. JOHN T. M'DERMOTT, UNITED STATES NAVY (RETIRED), TO THE GRADE OF LIEUTENANT COMMANDER

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 3,
Monday, February 14, 1949.

The subcommittee met at 10:30 a. m., Hon. Carl T. Durham (subcommittee chairman) presiding.

Mr. DURHAM. The bill before us is H. R. 1793. Captain McDill, are you prepared to testify on this bill?

(H. R. 1793 is as follows:)

[H. R. 1793, 81st Cong., 1st sess.]

A BILL To authorize the advance on the retired list of Lieutenant John T. McDermott, United States Navy (retired), to the grade of lieutenant commander

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, Lieutenant John T. McDermott, United States Navy (retired), shall be advanced to the grade of lieutenant commander on the retired list effective for all purposes from the date of his retirement.

STATEMENT BY CAPT. A. S. M'DILL, OFFICE OF THE JUDGE ADVOCATE GENERAL, UNITED STATES NAVY

Captain MCDILL. Yes, sir. Lt. John T. McDermott, who is the subject of this bill which is in the nature of private relief legislation, entered the naval service as a midshipman on May 31, 1916. He graduated June 7, 1919, and was commissioned in the line of the Navy and served continuously through and including the grade of lieutenant until June 30, 1941, at which time, by reason of his having failed of selection twice under the act of June 23, 1938 (the former Personnel Act), he was retired in the grade of lieutenant commander and with the pay of a lieutenant commander, by virtue of the Navy Department's interpretation of section 12 (k) of the act of June 23, 1938.

The section provided that lieutenants being retired with service in the Navy or the then Naval Reserve Forces, of more than 24 years were to be retired and with service prior to November 12, 1918, would be retired with three-quarters of the active duty pay of a lieutenant commander.

The Navy Department interpreted the service prior to November 12, 1918, at the Naval Academy as naval service. Lieutenant McDermott, fulfilling all those qualifications, was retired in the grade of lieutenant commander with three-quarters of the active duty pay of an officer of that rank and service.

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The Assistant Comptroller General on January 8, 1947, held that that service at the Naval Academy prior to November 12, 1918, could not be counted and that Lieutenant McDermott was entitled to only three-quarters of the active duty pay of a lieutenant of 22 years' service. Consequently, he became indebted to the Government in the sum of $2,300.

It is true that the section under which he was retired has been repealed by a subsequent statute, the Officer Personnel Act of 1947, but the Assistant Comptroller General has ruled that that statute does not apply to him. So he is still under a checkage of $2,300, the execution of which, the Navy Department feels, would be an injustice since it was through their misunderstanding and a conflict with an interpretation by the Comptroller General.

The Navy Department seeks this remedial legislation for this single individual who is, incidentally, the only one to whom it could apply.

Mr. DURHAM. Captain, you will recall that we have had legislation before us, to my knowledge, twice before, with the objective of counting service at the Academy for retirement purposes. Thus far we have refused to enact that legislation into law. What kind of precedent would this set? How big a group would it affect? Is there any one else in the Navy in this situation?

Captain MCDILL. No, sir; there is no one else in the Navy in this situation who would have to have a checkage forgiven or who would be subject to checkage in the future. He is the only one with this length of service under those circumstances.

Mr. DURHAM. The bill we had up last year, if it had been passed, would have given credit for time at the academies. That bill would have solved this problem.

Captain MCDILL. Yes, sir. It would have, but that was broad legislation to cover everyone. I think you have reference to——

Mr. HARLOW. S. 657.

Captain MCDILL. S. 657. It passed the Senate and failed in the House and that related to counting service at the academies for purposes of pay but not for purposes of retirement, sir. I think it would have been questionable, had S. 657 been enacted by the House whether it would have forgiven the checkage of Lieutenant McDermott.

Mr. DURHAM. Would this legislation be setting a precedent in regard to future efforts to count academy time for pay and retirement?

Captain MCDILL. It would be, sir; but for the fact that there is only one person involved at this time and there is not likely to be any others.

Mr. DURHAM. You now have a large number of retired personnel who graduated from the Naval Academy and from West Point, who don't draw retirement or don't get credit for their time at the academies. These men are already retired. How would this bill affect them?

Captain MCDILL. It would not affect them, sir, since they have been retired under many other provisions of the law, principally this act of 1938 which has been repealed and the physical retirement statutes. If they did not have service prior to November 12, 1918, service at the Academy would not be counted. They could not count their 4 years—or 3 years between the period 1916 and 1919 when we had the 3-year course at the academies—in their retirement pay. Those acts were all based on active commissioned service.

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Mr. DURHAM. You do not think it would affect them? There would be no effect on the long list of officers already retired?

Captain McDILL. No, sir.

Mr. DURHAM. It would not apply to them?

Captain McDILL. No, sir.

Mr. FISHER. This situation is a very obvious injustice to this man, the way it stands at this time.

Captain McDILL. It is. There are other cases in the cases of former enlisted men who have been retired with a higher rank but not higher pay.

Mr. DOYLE. As I understand the situation, this officer received this money. He now has it. He received it properly, but through a difference in opinion between two administrative departments of the Government he is being held accountable for its repayment to the Government.

Captain McDILL. That is correct.

Mr. DOYLE. If this bill is not passed he owes the Government $2,300?

Captain McDILL. That is correct.

Mr. DOYLE. Having done nothing and through no fault of his own but having received the money under a decision of a department of the Government?

Captain McDILL. That is correct.

Mr. DURHAM. I do not want to get in the position of creation a precedent by this bill. I don't like to do that by a private bill. If this bill sets no precedent, I see no objection to the bill.

Captain McDILL. We had formerly drafted it in general terms, but since that, discovered about a year ago that it applied only to McDermott. In the Senate they recommended that it be drafted to cover McDermott alone in the nature of private relief legislation.

Mr. FISHER. Has this bill passed the Senate?

Captain McDILL. Yes, sir.

Mr. FISHER. This session?

Captain McDILL. It has passed this session; yes, sir.

Mr. DURHAM. Any questions, Mr. Blackney?

Mr. BLACKNEY. No.

Mr. DURHAM. Mr. Doyle?

Mr. DOYLE. No.

Mr. DURHAM. Mr. Sasscer?

Mr. SASSCER. Yes; I am thoroughly in accord with the attempt to remedy what is apparently an injustice, but I would like to get cleared up on the mechanics of procedure. He is now a lieutenant?

Captain McDILL. He is; yes, sir.

Mr. SASSCER. To offset the sum of approximately $2,300 which he is now indebted to the Government, you promote him in rank so he would get higher retirement pay?

Captain McDILL. Actually he is on the retirement list as a lieutenant commander and he is drawing—his pay would be (under the Comptroller General's decision) three-quarters of a lieutenant's with 24 years' service.

Mr. SASSCER. That's what I mean. Instead of setting a precedent and giving him back this $2,300, or giving him credit for service in the Academy, you are moving him up one notch in his retirement grade so we can resolve it that way?

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Captain McDILL. So we can count that time to move him into the next pay grade—that of a lieutenant commander with 24 years' service.

Mr. SASSCER. How would that compare to what the pay is now?

Captain McDILL. I think on the retirement list it is about $37 a month. Do you have that?

Mr. HARLOW. No; I do not have the pay tables here.

Captain McDILL. He does get approximately $37 more.

Mr. SASSCER. He gets $37 a month now? Did you say a year or a month?

Captain McDILL. A month, sir.

Mr. SASSCER. And after a certain number of months this amount for which he is indebted to the Government would be absorbed?

Captain McDILL. Yes, sir.

Mr. DURHAM. Well, in effect, you are giving him credit for the time he spent in the Academy. That is what you are actually doing under the bill?

Captain McDILL. Yes, sir.

Mr. SASSCER. What happens to the $2,300 in the meantime? Is payment of that stayed?

Captain McDILL. No, sir; he has not paid that yet, as I understand it. The Attorney General has forborne prosecution pending the outcome of this legislation.

Mr. SASSCER. If this legislation is passed, it does not stop the Comptroller General from collecting this $2,300?

Captain McDILL. It is designed to do that. It is designed to stop him from enforcing that decision.

Mr. DURHAM. Mr. Fisher, do you have any questions?

Mr. FISHER. No questions.

Mr. DURHAM. Mr. Havenner?

Mr. HAVENNER. No, sir.

Mr. DURHAM. Do I hear a motion to report this bill?

Mr. BLACKNEY. I move the adoption of the bill.

Mr. DURHAM. If there is no objection, it is so ordered. That is H. R. 1793. Now, is there a motion to substitute S. 279 for this bill?

Mr. BLACKNEY. I so move, Mr. Chairman.

Mr. DURHAM. You have heard the motion. If there is no objection S. 279 is favorably reported.

Have we any other business?

Mr. HARLOW. No, sir.

Mr. DURHAM. The committee stands adjourned.

(Whereupon, at 10:45 a. m., the subcommittee adjourned.)

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[No. 18]

SUBCOMMITTEE HEARINGS ON H. R. 1741, TO AUTHORIZE THE ESTABLISHMENT OF A JOINT LONG-RANGE PROVING GROUND FOR GUIDED MISSILES, AND FOR OTHER PURPOSES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 1,
Monday, February 14, 1949.

The subcommittee met, at 10 a. m., Hon. Overton Brooks (chairman), presiding.

Mr. BROOKS. The subcommittee will please come to order.

Gentlemen, we have today for consideration H. R. 1741, a bill to authorize the establishment of a joint long-range proving ground for guided missiles, and for other purposes.

(H. R. 1741 and the reports accompanying are as follows:)

[H. R. 1741, 81st Cong., 1st sess.]

A bill to authorize the establishment of a joint long-range proving ground for guided missiles, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Air Force is hereby authorized to establish a joint long-range proving ground for guided missiles and other weapons by the construction, installation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, and utilities, within or without the continental limits of the United States, for scientific study, testing, and training purposes by the Departments of the Army, Navy, and Air Force.

SEC. 2. The Secretary of the Air Force is authorized in discharging the authority given in the preceding section to make surveys, to acquire lands and rights or other interests pertaining thereto, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, without regard to section 3648, Revised Statutes, as amended, in administering the provisions of the Act of July 9, 1942 (56 Stat. 654, 43 U. S. C., Supp. 315q).

SEC. 3. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, not to exceed $200,000,000 to carry out the purposes of sections 1 and 2 of this Act.

SEC. 4. The Secretaries of the Army, the Navy, and the Air Force are hereby authorized to contribute to the support of the joint long-range proving ground for guided missiles and other weapons to the extent they may deem necessary or advisable, including, but not limited to, the allocation for such support of funds available to them for such purposes.

SEC. 5. The Secretary of Defense may, at his discretion, transfer and reallocate to any department, board or agency within the National Military Establishment all, or any part of the authority granted herein, and, in connection with such transfer or reallocation, may transfer all or any part of the funds available for the establishment or support of the joint long-range proving ground for guided missiles and other weapons.

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[No. 4]

TO AUTHORIZE THE ESTABLISHMENT OF A JOINT LONG-RANGE PROVING GROUND FOR GUIDED MISSILES, AND FOR OTHER PURPOSES (H. R. 1741). MR. BROOKS

THE SECRETARY OF DEFENSE,
Washington, Jan. 14, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Secretary of the Air Force recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To authorize the establishment of a joint long-range proving ground for guided missiles, and for other purposes."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Air Force.

Sincerely yours,

JAMES FORRESTAL.

Attachments (2).

DEPARTMENT OF THE AIR FORCE,
Washington, January 7, 1949.

The SPEAKER,
House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith draft of a bill to authorize the establishment of a joint long-range proving ground for guided missiles, and for other purposes, which the Department of the Air Force recommends be enacted into law. The Secretary of Defense has assigned responsibility for the preparation and submission of this measure on, behalf of the National Military Establishment, to this Department. This proposed measure is similar to S. 2761, introduced in the second session of the Eightieth Congress.

The purpose of the proposed legislation is to provide substantive law authorizing the Secretary of the Air Force to acquire, construct, and equip a joint long-range proving ground. This proving ground is required primarily for the development and testing of guided missiles of ranges greater than 150 miles, and for subsequent training of personnel. The proposed bill, upon enactment, will serve as a basis for requesting appropriations for the establishment of such joint long-range proving ground and for such additional bases and ranges as may be later determined to be necessary.

The field of guided missiles is still within its infancy. Certain other nations have availed themselves of the services of German scientists and technicians and are making vigorous efforts to produce guided missiles of intercontinental ranges. It will not suffice for the United States to merely keep abreast of or equal the efforts of other nations; but, in order that this Nation may survive, it will be necessary for the United States to take the lead in this new field. Accordingly, there is an immediate and urgent necessity for acquiring, constructing, and equipping a land-based proving ground where guided missiles, now under development and scheduled for tests in the near future, can be flight tested at long ranges.

The entire question of a guided-missile proving ground where missiles with ranges in excess of 150 miles could be tested was referred by the Joint Chiefs of Staff to the Joint Research and Development Board upon the establishment of that Board in July 1946. A committee, in which all three services had equal representation, was formed on October 7, 1946, with the specific objective of "examining the entire question of a single, national, long-range guided-missile proving ground." This committee submitted a report to the Joint Research and Development Board on June 20, 1947, recommending the immediate establishment of a joint long-range proving ground and, as a result of the recommendation, the Board, in letters addressed to the Secretaries of War and Navy, approved the establishment of a long-range proving ground for guided missiles and allocated the responsibility for acquiring, building, and equipping the range to the War Department.

Since the enactment of the National Security Act of 1947 the responsibility has been reassigned to the Department of the Air Force. A joint executive group, embodying equal participation by the Army, Navy, and Air Force, has been established to pursue the project.

In order to meet the requirements of the guided-missile programs of the three armed services, it is essential that this range be in operation at the earliest possible

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ite. The Department of the Army and the Department of the Navy join with e Department of the Air Force in urgently recommending the enactment of is legislation.

This proposed bill has been coordinated among the departments and boards the National Military Establishment in accordance with procedures prescribed the Secretary of Defense.

The fiscal effect of the proposed legislation is manifest in that there is authorized e expenditure of not more than $200,000,000 to carry out the purposes of this t.

The Bureau of the Budget has been consulted and advises that there is no jection to the submission of the proposed legislation for the consideration of e Congress.

Sincerely,

W. STUART SYMINGTON.

Mr. BROOKS. We have several witnesses here. I don't have a list—o you, Mr. Brown—of the order in which the witnesses would like o appear.

Mr. BROWN. Mr. Chairman, General Fairchild is the first witness.

Mr. BROOKS. General Fairchild, will you take the stand, please, r, as the first witness in this hearing.

General FAIRCHILD. Yes, sir.

Mr. BROOKS. You have a prepared statement, I believe?

General FAIRCHILD. Yes, sir.

Mr. BROOKS. All right, then, if you will proceed with your prepared tatement, General.

I would suggest this to the members of the committee, if it is hat you would like to do, that we have these prepared statements isposed of by letting the witnesses read them and then we will serve the questioning until the end of the prepared statements. erhaps we will have to go into executive session for the questioning.

Mr. ANDERSON. I think that is a splendid suggestion Mr. Chairman.

Mr. BROOKS. General, if you will proceed with your prepared tatement, the committee will make notes and reserve their questions ntil later on.

TATEMENT BY GEN. MUIR S. FAIRCHILD, VICE CHIEF OF STAFF, UNITED STATES AIR FORCE

General FAIRCHILD. Mr. Chairman and gentlemen of the com-ittee, the Air Force much appreciates this opportunity to appear efore your committee, jointly with the other agencies of the National ilitary Establishment, in support of this project which is considered great importance by the Office of the Secretary of Defense and the epartments of the Army, Navy and Air Force. The legislation efore you is enabling legislation for a joint long-range proving ground r guided missiles. We believe such a range to be an absolute quirement, in order to develop weapons that are essential to the ational security.

It should be borne in mind through this discussion, and those to llow, that this long-range proving ground is a joint venture of the rmy, Navy, and Air Force. As will be brought out in more detail ter, all services have need for such a facility in varying degree, and om its inception, each service has had equal representation in all ases of the planning. In proposing the project to the Secretary Defense, the Research and Development Board recommended that onsorship of the project be assigned to the Air Force. The Secretary Defense approved the proposal, including that recommendation.

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Although the Air Force will have over-all responsibility for the range, each service, and the civilian scientists, will be appropriately represented thereat. Attention is invited to the provisions of section 5 of the proposed legislation, which enables the Secretary of Defense to change the primary responsibility to either of the other services should he, for any reason, feel that such a change would better serve the National Military Establishment.

The most qualified personnel of each service have in the past been made available for the preliminary work on this project, and the Secretaries of the Army and Navy have assured the Secretary of the Air Force that this policy will continue. They, in turn, have been assured that their needs will be considered on a par with those of the Air Force, and rigid adherence to this policy has been directed. I can truly say that the joint long-range proving ground, although started before passage of the National Security Act of 1947, is a perfect example of cooperative effort on the part of the three services, in a project that is urgently needed by each, to the end that a proper facility will be obtained with a minimum expenditure of funds.

In discussing this project, it would be desirable if we were able to predict exactly the relative importance of guided missiles in any possible future conflict. Unfortunately, we cannot, at this time, make such exact predictions as to the role which guided missiles will play in future. The potentialities of these new weapons, however, were clearly indicated in the latter stages of World War II when the Germans employed, with considerable effect, the V–1 and V–2 surface-to-surface missiles and we ourselves employed radio-controlled bombs. Our experts who are working in this field feel it quite likely that within 10 years we will be replacing present guns and bombs by guided missiles and that within 15 years surface-to-surface guided missiles will have been perfected to the extent that they will have important applications in the field of tactical and strategic bombardment operations. Of course these potentialities cannot ultimately be realized unless we energetically pursue, research and development, operational experimentation, and training.

Since the end of the war, we have comoleted a number of research studies on all types of missiles, and we are now entering the development stage on selected projects which we believe will produce high performance guided missiles in all categories: surface-to-surface, surface-to-air, air-to-surface, and air-to-air missiles. An essential element of this program, however, is an adequate flight test facility—the long-range proving ground.

To summarize, the Army, Navy and Air Force recognize the importance of guided missiles in wars of the future. We have deliberately elected to produce weapons in this field far superior to any used in World War II, involving considerable basic research, rather than to conduct a "crash" program, which would produce a usable weapon of limited effectiveness and at excessive cost. Our program has proceeded to a point where a flight test range of far greater length than any now in existence is an absolute necessity. Missiles with ranges up to 500 miles will be ready for testing during 1949, without a range of sufficient length on which to fly them. If the services are unable to test these and other long-range missiles at time of completion, the entire schedule of research and development will be disrupted. As a result, it is possible that other nations may be able to forge ahead

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is country in the development of long-range guided missiles. It is r these reasons I urge that you favorably consider the legislation w before you authorizing the construction of a joint long-range oving ground.

General Sayler of the Army will, with your permission, follow me ith some remarks in support of this project.

Admiral Gallery of the Navy has prepared a statement which he d planned to give. Unfortunately, due to the shortness of notice this hearing he was unable to cancel a commitment for a Research d Development Board meeting. He therefore has sent Commander arris to present the statement he had intended to give.

Dr. Compton, of the Research and Development Board, is prepared make a statement concerning the work of the Board in this field.

General Richardson, of the Air Staff, who has supervised the plan- ng for the joint long-range proving ground, will conclude with some tails concerning it.

All of these statements have received clearance from the Bureau of e Budget.

If at the conclusion of these remarks there is anything further that u wish to know about the project, we will all be available for estioning.

Mr. BROOKS. Thank you very much, General.

We will now call on Maj. Gen. H. B. Sayler, of the United States rmy.

General, will you step forward, please, sir.

ATEMENT BY MAJ. GEN. H. B. SAYLER, UNITED STATES ARMY

General SAYLER. Mr. Chairman and gentlemen, General Fairchild s forcefully explained the necessity and importance of the proposed int long-range proving ground for guided missiles.

The Army is in complete accord with the philosophy of a joint opera- on for this important project. It is believed that by this joint opera- on maximum efficiency will be obtained, that all the services will joy significant advantages as a result of intimate association with l projects conducted at such a station, and that this method of eration will be most economical.

From the time of the original decision that such an installation was quired as an element of the National Military Establishment, the rmy has actively supported the project. The most experienced rsonnel, both military and civilian, have been assigned to this task required, and it is intended to continue this policy.

The Army program of research and development in the guided- issile field includes a number of items which can be flight-tested only hen the joint long-range proving ground becomes available. Such sting must be accomplished to determine the effectiveness and sound- ss of the research program.

The Army firmly believes that this joint long-range proving ground ill provide the only sound economic solution to the problem of test ing long-range guided missiles for all the services, and to that end holeheartedly supports the project.

Thank you.

Mr. ANDERSON. Mr. Chairman, do I understand that it is your wish have all of these prepared statements read before any questions are sked of any of the witnesses?

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Mr. BROOKS. That is the thought there. And we will ask the wi nesses if possible to remain here so we can question them all in exec tive session. I am told a good deal of this involves top military secret

Mr. COLE. Mr. Chairman, in my opinion, there is a good bit of that is a matter of public interest and information and is not of a mil tary nature. I appreciate that there will be confidential materia but if a question of that nature arises, it can be deferred until we do g into executive session. It seems to me there are other areas of prop public inquiry which shouldn't be closed to the public.

Mr. BROOKS. Anything that is a matter of proper public inquir which is not confidential, certainly ought not be in executive sessio

I think the orderly procedure would be to hear all of these prepare statements.

If the gentleman has some subject in mind in connection with th which is not confidential, of course the committee would want t hear that in open session, but if it goes into the realm of militar secrets I know the gentleman wouldn't want that in open session.

Mr. RIVERS. Do I understand, Mr. Chairman, that they are goir to give us other information in executive session, in addition to th that they have presented?

Mr. BROOKS. Yes; a great deal of additional information.

Mr. RIVERS. I see.

Mr. BROOKS. Rear Adm. D. V. Gallery is not here, being u avoidably absent, but Commander Harris I believe is here.

Commander HARRIS. Yes, sir.

Mr. BROOKS. Commander, will you come forward and give Admir Gallery's statement. I understand that the Admiral will be availab for questioning at a later date?

Commander HARRIS. Yes; he will be available tomorrow, sir.

Mr. BROOKS. Thank you.

STATEMENT OF REAR ADM. D. V. GALLERY, UNITED STATE NAVY, BY COMMANDER DAVID A. HARRIS

Commander HARRIS. Mr. Chairman and gentlemen of the com mittee, the Navy concurs in, supports, and recommends early enact ment of the proposed legislation for the establishment of the join long-range proving ground for guided missiles.

As will be noted in the title of the proposed bill, the word "joint emphasizes the mutual use and joint nature of this single facilit whereat the needs of all three services may be met. This is a majo project in which complete unity and accord has been demonstrate since its inception.

The Navy has a definite need for this facility. The guided-missil program of the Navy requires the use of a proving ground of sufficien extent to provide the necessary testing, proving, and eventual train ing of personnel in the operational use of long- and medium-rang missiles.

Having long realized this future requirement, the Navy has sup ported this project since its inception both with material and person nel. During the early study stages, the Navy provided personnel, transport, and services. Since the task of supplementing the directive of the Secretary of Defense relative to the joint long-range proving ground project was assigned to the Air Force, the Navy has con-

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inued to support the project and assist the Air Force in accomplishng this mission. Personnel have been assigned to duty with the Air Force, and the Bureau of Yards and Docks, of the Navy, is presently ngaged in making engineering studies and designs leading to the onstruction of all offshore facilities.

While the Navy does not expect to make as extensive use of this ange as some of the other services, yet the Navy does have a very lefinite need for this facility and desires to go on record as supporting his project as one which is essential to the development of guided nissiles by this country and vital to our national security.

Mr. BROOKS. Thank you very much, Commander.

Mr. COLE. Mr. Chairman, there are some questions I would like o ask of the Navy. If you want to wait and bring these witnesses ack in their turn, I will wait until then.

Mr. BROOKS. If it is all right with you, Mr. Cole, I think, since we ave started out by letting them deliver their prepared statements, it ould be more in order to go ahead.

Mr. COLE. All right.

Mr. BROOKS. If you have any reason for making a change——

Mr. COLE. No.

Mr. BROOKS. All right.

We have here Dr. Karl T. Compton, Chairman of the Research and Development Board and President of MIT. Doctor, would you step orward, sir. We are delighted to have you here again before the ommittee.

Dr. COMPTON. Thank you, sir.

Mr. BROOKS. Have a seat, sir, and proceed.

STATEMENT BY DR. KARL T. COMPTON, CHAIRMAN, RESEARCH AND DEVELOPMENT BOARD

Dr. COMPTON. Mr. Chairman and gentlemen of the committee, since the research, development, and test of guided missiles is a comparatively new field, I will start my discussion by explaining a few of the terms that are in daily usage in this work. First, what is a guided missile? The currently accepted definition is that it is "an unmanned vehicle moving above the earth's surface, whose trajectory or flight path is capable of being altered by a mechanism within the vehicle."

By mutual consent, the services have further subdivided guided missiles into four categories according to the manner of launching and the location of target. These are: Surface-to-surface, surface-to-air, air-to-air, and air-to-surface. A surface-to-surface guided missile, for example, is one which is launched from the ground or from a ship and is thence steered during its flight to strike its distant target, which may be an enemy ship or factory or other military objective on the ground or sea. An air-to-surface missile would be one launched from an airplane against a target on the surface of the earth, either on land or sea, and moving or stationary. Note particularly that we do not include ordinary bombs, shells, or bullets, as these missiles do not incorporate an internal mechanism to influence their trajectory.

The proving ground under discussion today is required primarily for the completion of research and development work on guided missiles with ranges greater than 150 miles, for which no facility now

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exists in this country. There are other requirements for this facility, however, as will be brought out by General Richardson.

To further explain guided missiles as compared to conventional shells or bombs, and at the risk of oversimplification, let us consider the action of these two types of missiles. The artillery shell or bullet is fired from a gun at a high velocity. After firing, it is influenced only by atmospheric conditions and gravity. The airplane bomb, after it leaves the plane, is affected only by the motion of the plane at launching, the atmosphere, and gravity. In both cases, accuracy of the initial aim plus prediction of atmospheric conditions and possible movement of the target are the factors that determine a hit or miss.

The guided missile, on the other hand, usually has incorporated in it a motor which takes over after launching and accelerates the missile or continues it at a constant speed for an extended period of time, thereby increasing its range. Various internal mechanisms may be used to provide guidance and control to the missile while in flight. These mechanisms are controlled in various ways by outside influences, such as by raido or radar, as one example. The missile may have some kind of "seeing eye" which automatically steers it to its target after it has come within a few miles of its objective.

By these means, a missile can fly a predetermined course to a target, recognize it, and make final alterations to its course, in order to deliver the warhead within the target area. All this will be done eventually at supersonic speeds to reduce the possibility of enemy defense against it. I hasten to say that this oversimplified description of a guided missile is, in no sense, what we have today, but is what we are working toward. At the same time, however, I will state that none of the features so briefly described are considered insurmountable by American science, and all are in an encouraging state of development.

A test range is an area within which the experimental guided missiles can be tested in flight to study their over-all performance and the behavior of all their parts: wings, motors, electronic equipment, rudders, stabilizers, etc. By such tests, faults can be identified and corrected, adjustments perfected, and alternative methods of operation compared. Without the benefit of such tests, the manufactured missiles would be so unreliable that the money spent on their development would be largely wasted.

An important term that is used repeatedly in connection with test ranges is instrumentation. This term is applied to the integrated system of devices used at a range to acquire the test data. One function or element of the instrumentation system is called telemetering, which may be described as the transmission of data from the missile to the ground by electrical means. It is essential that the scientist who is developing a missile know exactly what is happening within it all at times. Telemetering data tell us how engines, control surfaces, and other mechanisms of the missile are functioning, and whether the missile is rolling, tumbling, or deviating from its course. These data are picked up at various ground instrumentation stations located at intervals along the predicted flight path.

If I might interpolate just a bit into my prepared statement, I would like to use this illustration. You all know the instrumentation panel which is in front of a pilot of an airplane, which gives the performance of the motor, his compass, and all the details that he needs

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to know about the functioning of the instruments. It is by means of the readings on those instruments that he properly controls his craft.

Well, now, in a guided missile, there is no pilot there who can see those things, but it is necessary to have that same kind of information. So the instruments are put in the guided missile; but, instead of having the pilot in the guided missile to look at the instruments, all the readings of/those instruments are sent down by some kind of radio control to the ground and reproduced on instruments at the ground so that the observer on the ground sees what is going on in the plane just as if he was sitting in the cockpit of a guided missile and looking at the instruments themselves. That is the telemetering device.

In addition to the telemetering receivers at each station, special electronic instruments are necessary to track the missile throughout its flight to continually indicate its position in space, as well as high-speed cameras to take pictures of the launching and early part of the flight.

At the conclusion of a flight, a study of the data thus obtained gives a complete picture of what happened to the missile during its entire flight. Even the simplest missile, made to test a particular component of the finished product, costs many thousands of dollars. The more complicated may well run into the hundreds of thousands. This reason, alone, makes it absolutely essential for both economy and success that a flight-test range have adequate instrumentation to produce the data necessary in the experimental work connected with the development of guided missiles.

You are undoubtedly interested in the question of the hazard to people and property, and the interference with private and commercial interests, in connection with the test flying of missiles on the proposed range. In the minds of the uninitiated, the danger element has been greatly exaggerated; the mere mention of guided missiles conjures up visions of death and destruction. Actually the danger in this case will be very small, because every possible precaution will be taken to make it so. The test missiles will not have explosive warheads; they will have means to dispose of them in the air, over a safe area, if they deviate too far off course. They will normally fly so high that it will be impossible to detect them without special instruments. From a safety standpoint, they will be no more dangerous than a conventional airplane flying overhead; from a nuisance standpoint, they will be less objectionable. Most important of all, the test range will be located in a region so sparsely inhabited, in the areas where there might be any danger, that the hazard will be wholly negligible.

I have tried to give you a brief picture of a guided missile from the point of view of the scientist who is developing it, some of the terms used, and the essentials of a test range. We who have been associated with the guided-missile field from its inception are convinced that weapons such as I have described, with ranges in the hundreds of miles and accuracies acceptable to the military, can be developed. To develop them, we must have a range on which to test them. The need is urgent. Actually, the guided-missile development program is one of our largest research and development programs, and hundreds of millions of dollars' worth of the results of this work are becoming dependent on the availability of such a test range. As so often happens, we will need this facility before it is in operation even if work

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were started on it today, as we are rapidly outgrowing existing facilities.

I do not mean by that that the existing ranges are becoming obsolete. On the contrary, I cannot visualize the time when we will not need the three existing smaller ranges. However, none of them permit expansion in length; and we are in dire need of a facility that can meet all of our foreseeable needs in the field of the long-range guided missiles.

I have purposely kept my discussion in general terms and left the presentation of detailed information to General Richardson. As already mentioned, this project has been critically studied by the experts of the Committee on Guided Missiles of the Research and Development Board, and unanimously approved by them and by the Board.

Thank you.

Mr. BROOKS. Thank you very much, Doctor.

We next have Brig. Gen. William L. Richardson, of the United States Air Force.

General, will you have a seat, sir, and proceed?

STATEMENT BY BRIG. GEN. WILLIAM L. RICHARDSON, UNITED STATES AIR FORCE

General RICHARDSON. Mr. Chairman and gentlemen of the committee, the Guided Missiles Committee of the Joint Chiefs of Staff 3 years ago recognized the necessity for a test range much longer than any existing facility, and turned the matter over to its successor, the Joint Research and Development Board. The Research and Development Board promptly established, in the fall of 1946, the Committee on Long-Range Proving Ground, of which I had the honor of being chairman. This committee, which consisted of representatives from the Army, Navy, and Air Force, was given, as a mission, the examination of the entire question of a single national long-range guided-missile proving ground.

The first question before the committee was to determine whether there was a definite requirement for such a facility. Investigation of the armed forces guided-missile development program qickly revealed an urgent requirement for this facility.

The next question was to determine the characteristics of an ideal proving ground. After detailed discussion, 17 weighted factors were established for the ideal range, which I will summarize by three basic requirements.

Mr. Chairman, we would like to refer to this board, and I believe believe if you put it up in this corner, Colonel Turner, we can best see it. This chart is a schematic diagram of what we might call an ideal proving ground.

First, a base area, with a suitable launching site, supported by adequate technical facilities, located within the continental limits of the United States.

Second, a range at least 3,000 miles long, thoroughly instrumented by means of observations stations for the first 500 miles, and with impact areas at various points along the line of flight.

Third, a climate such that year-round operating conditions will prevail.

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I would like to discuss these requirements in a little more detail. The base area, in general, subdivides into three main features: the launching site—do you want to point these out, Colonel Turner?—supporting technical facilities, and administrative facilities. The launching site is comparatively simple, consisting of concrete platforms from which to launch the missiles, and an appropriate number of concrete structures to house personnel and instruments which must be present during missile launching.

After considerable study and discussion, it was decided that, for reasons of safety, the area within 5 miles of the launching site must be under military control and, in general, must be cleared of all persons except those involved in the launching. It follows that a launching site in even a moderately populated area is economically not feasible in view of the number of people in an area of that size who would have to be relocated.

I will pass briefly over the supporting technical facilities, as they present no novel problem. Test missiles will arrive at the base ready for assembling, servicing, and launching, but rather complete shops, laboratories, and static test facilities will be needed to make minor modifications, repairs and preflight tests.

In discussing the administrative facilities required, we contemplate an eventual community of 13,000 inhabitants. (5,000 military and civilian employees, 8,000 dependents), the great majority being permanent residents. This community must be established at some distance from a large city, and therefore cannot depend on such a center for housing, shopping, schools, and other necessities of American life. This makes it necessary to provide these facilities to a minimum degree, working in close cooperation with the surrounding communities, regardless of how small, to assure no duplication or undesirable competition.

Allow me to emphasize that we do not plan to construct an installation to accomodate 13,000 individuals initially. We are working under a very positive directive that minimum essential facilities only will be included in the initial installation. However, the present estimates indicate that a base area of this magnitude eventually will be required, and initial requirements should be integrated into the eventual plan to the extent that is economically feasible. This is a facility which will be used to test guided missiles, which we firmly believe will be of permanent and ever-increasing importance to the Military Establishment; and, although we are planning on a modest start, we consider it a permanent installation, which must be laid out to permit the expansion that is indicated.

The second and most difficult requirement is that of an adequate flight test range. Means of providing continuous information on the position and behavior of the missile throughout its entire flight is desirable, and is considered essential during the first 500 miles. Accurate information on the behavior of the missile at the point of impact must also be provided. To meet these requirements it is necessary to place suitable devices at intervals of 50 to 100 miles along the surface projection of the predicted line of flight of the missile. A communications network along the range is necessary to tie these devices together and provide a master time standard at each station. This network also provides command circuits to the instrumentation

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tations and the weather observation stations which are necessary for atmospheric data prior to each flight.

The third major requirement is suitable climatic conditions for all-year operation. Much of our work must be outdoors and this excludes extremely cold temperatures and excessive rains. Visual tracking and photography of the flight at take-off play an important role in the testing of missiles and cannot be accomplished in climates where there is a high degree of fog or poor visibility. Since electronic devices are important in down-range instrumentation, the regions of natural electronic disturbances must be avoided.

To complete our discussion of this project, I would like to emphasize that we plan initially to provide only the minimum facilities essential to flight-test long-range missiles and to expand these facilities only as work load and other conditions dictate.

You are familiar with the fact that we are now testing missiles and components at three principal ranges: White Sands-Alamogordo in New Mexico, Point Mugu and Inyokern in California. You may wonder about consolidation of these facilities with this proposed long-range proving ground. Disregarding present and anticipated work loads, the existing ranges are not capable of expansion in length to accomplish the long-range task. An independent committee of the Research and Development Board has made a survey of the work loads of existing ranges and has come to the conclusion that they will be saturated in the next few years. This committee recognized the fact that, as originally conceived, the joint long-range proving ground was for missiles with ranges over 150 miles, but stated that this was an arbitrary restriction that should not prevent flight testing of shorter range missiles if they could be worked in. The services all agree to this expansion of the original concept of the range so long as it does not interfere with the primary long-range flight-test mission.

It is the firm conviction of all authorities in this field that as longer range missile development progresses the requirement for short ranges to test missile components will increase rather than diminish. For this reason, the establishment of the range proposed here in no way eliminates or lessens the requirement for existing ranges.

So far we have discussed only the research and development aspect of this range, which is considered the primary purpose of the facility but it has an additional mission which must not be overlooked. This is operational training on guided missiles. When a new weapon such as the guided missile is finally accepted by a service, there remains the very great problem of training troops to use it and the development of tactics in connection with its use. This is an operation that will continue as long as we accept the weapon as standard and will change with each modification. We have taken this factor into consideration and, while presenting the requirement as one for research and development, have not overlooked that it will eventually be used to develop tactical doctrines and train troops.

In closing I wish to state that we feel the development of guided missiles must be pursued without delay, in the interest of national security. We confidently expect that air-to-air missiles and surface-to-air missiles will greatly enhance our ability to ward off devastating air attacks by an enemy; that air-to-surface missiles and surface-to-surface missiles will be necessary in order to launch effective and timely counterattacks. We are certain, also, that these vehicles will provide

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us with the means to investigate the upper air scientifically and eventually to explore outer space, and that they will have application as high-speed commercial air carriers. But we must gain and retain technical superiority over foreign countries in this field—we all know the danger of an apathetic attitude in these matters and the consequences of "too little and too late." We have the technicians and industrial potential to develop them, but currently lack a facility essential to their completion. This facility is a proving ground of sufficient length to test them, which we hope the Congress will provide by favorable action on the bill before you.

Mr. BROOKS. Thank you very much, General.

Now, gentlemen of the committee, you have heard the prepared statements. I think that is all. Is there any other statement, Mr. Brown?

Mr. BROWN. That is all.

Mr. BROOKS. Those are the prepared statements.

Is there any testimony now which the committee wishes to develop which would not be considered in executive session?

Mr. COLE. Mr. Chairman, there are a couple of questions I would like to ask of Dr. Compton, representing the Research and Development Board.

Mr. BROOKS. Doctor, would you mind stepping forward, again, sir? And may I say this to all of the witnesses, too. Of course, because of the nature of the subject, there is naturally a good deal of top military secret material in this matter. So may I suggest to all of the witnesses if any question asked elicits an answer which would be a military secret that the witness so indicate and refrain from expressing himself in open session.

Mr. Cole.

Mr. COLE. The first question, Doctor: What is there about this project which causes the Board to exclude subsurface missiles, more particularly torpedoes?

Dr. COMPTON. Well, it doesn't exclude them, except in this way: The development of subsurface missiles of analogous types is already going on as part of the antisubmarine warfare campaign. But the type of facility that is needed for those is so different from this type of facility that there didn't seem to be any point in combining them.

Mr. COLE. Well——

Dr. COMPTON. Those underwater missiles are essentially of short range and do not need a long-range testing station.

Mr. COLE. But the scientific principles involved may be the same?

Dr. COMPTON. There are many that are similar. The underwater problem is somewhat more difficult because you can't send radio signals very well through the water. That gives the big opportunity to the air. But except for that limitation, they are essentially similar.

Mr. COLE. In your statement you referred or used an expression, the "seeing eye." This may be a question you don't care to answer in open session. Wasn't the "seeing eye" one of the proven developments of this war?

Dr. COMPTON. It did get into very limited experimental use; yes, sir.

Mr. COLE. So that when you refer to the possibility of the "seeing eye" you really mean the development and the perfection of what has already been established as a possibility?

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Dr. COMPTON. Yes; that is right.

Mr. COLE. But there isn't so much speculation with respect to the "seeing eye" phase of it——

Dr. COMPTON. Yes. I think it is perfectly proper to say on the record because I think it is generally known. One of the possibilities of the "seeing eye" would be the possibility of carrying a television set in the nose.

Mr. COLE. Did the Board in connection with its consideration of the need for the problem consider the location for the project?

Dr. COMPTON. Yes, sir.

Mr. COLE. And did the Board approve of the location for this project?

Dr. COMPTON. Yes, sir.

Mr. COLE. Mr. Anderson wants me to ask you where it is, and I know that is one of the questions that I mustn't ask.

Dr. COMPTON. I would rather wait until we are in executive session, and I think somebody else had better answer that.

Mr. COLE. But you indicated in your statement that the hazards involved in making these tests were comparatively negligible. If that is so, I am curious to know why it is necessary for us to be so extremely selective in the location of the project?

Dr. COMPTON. Well, perhaps I didn't make myself clear, Mr. Cole. I think the hazards are negligible in very large part because an area of this sort is selected.

In spite of anything I said, if you flew a guided missile over Washington or New York City I wouldn't say the hazard would be negligible at all in spite of the other precautions. One of the precautions that makes it safe is the selection of an appropriate area.

Mr. COLE. Of course, there are ample opportunities—I withdraw the question.

Dr. COMPTON. I might say this, perhaps in further answer. The limitations of the existing three ranges that General Richardson mentioned—at least in two of those ranges—have to do with the fact that there are surrounding built-up areas where it isn't deemed safe to send the missile.

Mr. COLE. After this new range is developed, assuming it is, what will become of the three existing ranges?

Dr. COMPTON. They would continue to be used.

For example, the one down at White Sands was originally developed to test rockets—rather than long-range guided missiles. It will certainly continue to be used for testing either short-range guided missiles or long-range missiles that are shot straight up rather than far out horizontally. That program is exceedingly active.

Right beside that there is the Holloman Air Base, which is also being used for testing guided missiles. The work load there is already so heavy that there has been very great difficulty in synchronizing the work at the two places so that they don't interfere with each other. That combination is already overloaded with short-range work.

Mr. COLE. Is it a field of proper inquiry for me to ask the range which you visualize as being within the realm of possibility for these guided missiles?

Dr. COMPTON. It is a hard question to answer, sir. Certainly I should say 5,000 miles is within the range of possibility, but as to whether it would be worth while using at a range of that length would depend on how accurate the control devices are.

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Let me give this answer. Suppose you take one of our existing aircraft, like the one that flew nonstop to Honolulu and back. That could be used as a guided missile if you had automatic controls instead of pilots in the machine. That would be one. Now, That has a range—I don't know what it is, but it is well over 5,000 miles; perhaps seven or eight thousand. That could be a guided missile. But it would be very inefficient to use that as a guided missile unless you can direct it from your outside control accurately enough on the target so the damage you do to the enemy's economy is greater than the damage you have done to your own in the cost of producing missiles. So it is questions of that sort, I think, that determine the feasibility as to range it is largely questions of economy.

Mr. COLE. Wouldn't the range also be determined in a large measure by the size of the warhead; that is, by the load?

Dr. COMPTON. Oh, yes; that is true.

Mr. COLE. Now, can you estimate the size of the load for a range of 3,000 miles?

Dr. COMPTON. Well, it is possible. I know it can carry a 10-ton load.

Mr. COLE. For 3,000 miles?

Dr. COMPTON. Yes; that is, if your guided missile is something like one of our existing heavy bomber aircraft.

Now, if you are thinking of a supersonic guided missile, I don't know whether you could make it that heavy or not. At least it hasn't been done yet.

Mr. COLE. Perhaps——

Dr. COMPTON. But the really important thing is to find out or develop methods of accurate dropping on the target; that is delivery, on the target.

Mr. COLE. Have we succeeded in developing a guided missile, irrespective of range?

Dr. COMPTON. Oh, yes; yes, sir.

Mr. COLE. Is it a matter of secrecy to know the range of that missile? If there is any doubt in your mind——

Dr. COMPTON. I am not quite certain of that.

Mr. COLE. I better withdraw it.

Did the Board consider at all the cost phases of this project?

Dr. COMPTON. We did; yes.

Mr. COLE. And——

Dr. COMPTON. You mean of this proposed test range?

Mr. COLE. Yes.

Dr. COMPTON. Yes, sir.

Mr. COLE. Is it the unanimous opinion of the Board that this testing range is not only sorely needed in the interest of national security but that it is economically justified from the standpoint of cost?

Dr. COMPTON. That is true. It is the best solution we have been able to find of this problem and we feel as a long-range development program—and by that I mean something that will be particularly important in the direction of warfare—say, from 5 years from now on—that this is essential.

If we were thinking about a war breaking out in 1951 or something of that sort, then this would not be essential. But as part of the complete military program of preparedness, we think it is an exceedingly important thing.

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We are also convinced that the plans that have been developed are well thought out and certainly our Board knows of no improvement that can be made in them at this stage.

Mr. COLE. And to make sure of the Board's recommendation, it is true that the Board has approved of this particular location?

Dr. COMPTON. Yes, sir.

Mr. COLE. That is all.

Mr. BROOKS. Any further questions from any members of the committee in open session? [No response.]

Doctor, I would like to ask you one or two questions which I think could be handled in open session.

I just want to ask you this: It is true, is it not, that because of the requirements which are set forth in these statements made by the witnesses, the location of such a plant as contemplated naturally has its difficulties and the areas where it might be located are very, very limited?

Dr. COMPTON. Yes, sir.

Mr. BROOKS. That is correct, isn't it?

Dr. COMPTON. That is true.

Mr. BROOKS. I think that is all I wanted to ask.

Mr. ANDERSON. Mr. Chairman, I would like to ask one question. I presume this should be directed, however, to General Fairchild rather than to Dr. Compton.

Does this $200,000 contained in this bill contemplate that that is the eventual cost of this project?

General FAIRCHILD. Yes, sir.

Mr. ANDERSON. That is the eventual cost when you have your community of 13,000 people fully established and the range entirely completed?

General FAIRCHILD. Yes, sir; I believe that is correct.

General RICHARDSON. That is correct, sir. That is the over-all cost provided we expand to the maximum possible workload. We don't contemplate anything like that initially, however.

Mr. ANDERSON. One other question in that same connection.

Will there be only one request made by the joint services for this amount of $200,000,000, or will the request come through the various branches of the services, before the Appropriations Committee?

General RICHARDSON. No, sir. It will be contained in one request. We will keep this project as a separate project throughout, in order to avoid any confusion with respect to it.

Mr. ANDERSON. It will be one single request, then?

General RICHARDSON. Yes, sir.

Mr. ANDERSON. For the joint services for $200,000,000?

General RICHARDSON. No, sir, there will be no request for $200,000,000 at one time.

Mr. ANDERSON. No, not at one time.

Over what length of time?

General RICHARDSON. Possibly over 10 years, sir.

Mr. ANDERSON. Over a 10-year period?

General RICHARDSON. Yes, sir.

The project is being visualized as being split up in three phases. The first phase would be the minimum requirements to begin operations. That is a matter which would require, we estimate, about $60,000,000 over a period of about 3 years. We will stop then and

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use that much of it until the workload builds up to require expansion. The $200,000,000 ceiling includes phases 2 and 3, which are expansions to take care of an additional workload if it develops.

Mr. ANDERSON. I see. That is all, Mr. Chairman.

Mr. BROOKS. If there are no further questions then the committee will go into executive session——

Mr. COLE. Mr. Chairman, on that point raised by Mr. Anderson, or the answer which the general has given to the point raised by Mr. Anderson——

Mr. BROOKS. Mr. Cole.

Mr. COLE. You expect to spend $60,000,000 over the next 3 years?

General RICHARDSON. Yes, sir.

Mr. COLE. Then, would you have any serious objection to limiting this authorization to $60,000,000, so that 3 years from now the Congress can take a look at world conditions and military requirements and see whether they want to appropriate any more?

General RICHARDSON. We would prefer, sir, to receive the authorization for the eventually visualized facility. But our primary objective is to get into operation at the earliest possible date. So any solution that was arrived at by the Congress to permit us to do that would be satisfactory, sir.

Mr. COLE. Well, I will word it differently. Would it interfere seriously with your program if the amount were fixed at $60,000,000?

General RICHARDSON. No, sir.

Mr. BROOKS. Mr. Rivers.

Mr. RIVERS. In that connection, I think Dr. Compton made the statement that the economies involved would always be re-evaluated and reviewed, is that correct?

General RICHARDSON. Yes, sir.

Mr. RIVERS. To see whether the Nation can stand it.

General RICHARDSON. That is correct, sir.

Mr. RIVERS. So that would answer the question there.

Mr. BROOKS. Well, if there are no further questions, we will go into executive session.

(Whereupon, at 11 a. m., the committee went into executive session.)

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[No. 19]

SUBCOMMITTEE HEARINGS ON S. 632 TO AUTHORIZE CERTAIN PERSONNEL AND FORMER PERSONNEL OF THE NAVAL ESTABLISHMENT TO ACCEPT CERTAIN GIFTS AND A FOREIGN DECORATION TENDERED BY FOREIGN GOVERNMENTS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 3,
Tuesday, February 15, 1949.

The subcommittee met at 10 a. m., Hon. Carl T. Durham (chairman) presiding.

Mr. DURHAM. The next bill is S. 632.

(S. 632 is as follows:)

[S. 632, 81st Cong., 1st sess.]

AN ACT To authorize certain personnel and former personnel of the Naval Establishment to accept certain gifts and a foreign decoration tendered by foreign governments

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following-named members and former members of the naval service are hereby authorized to accept such gifts as have been tendered them by foreign governments as of the date of approval of this Act: Rear Admiral Harold M. Martin, United States Navy; Captain William R. Frost, United States Naval Reserve; Captain Bennett W. Wright, United States Navy; Captain George C. Wright, United States Navy; Captain Richard W. Bubble, United States Navy; Commander Robert F. Carmody, United States Navy; Commander James I. Cone, United States Navy; Commander Jack Dean, United States Navy; Commander Gordon Fowler, United States Navy; Commander Richard L. Fowler, United States Navy; Commander John E. Hausman, United States Navy; Commander Draper L. Kauffman, United States Navy; Commander James A. Knowlton, United States Naval Reserve; Commander John P. Lunger, United States Navy; Commander Robert M. Milner, United States Navy; Commander Frank G. Raysbrook, United States Navy; Commander Frederick M. Stiesberg, United States Navy; Commander William A. Stuart, United States Navy; Commander Richard S. Rogers, United States Navy; Commander George R. Lee, United States Navy; Lieutenant Commander Raymond A. Boyd, United States Navy; Lieutenant Commander Laurenca B. Green, United States Navy; Lieutenant Commander Melvin C. Hoffman, United States Navy; Lieutenant Commander Victor A. Moitoret, United States Navy; Lieutenant Commander John C. O'Connor, United States Navy; Lieutenant Commander Henry Nelson, United States Naval Reserve; Lieutenant Commander Norman L. Paxton, United States Navy; Lieutenant Commander Byron G. Shepple, United States Navy; Captain James J. Bott, United States Marine Corps; Lieutenant Irwin J. Vanderswag, United States Marine Corps; Lieutenant George H. Belk, United States Navy; Lieutenant Samuel Hopkins, Junior, United States Navy; Lieutenant Jack Scott, United States Navy; Lieutenant (junior grade) La Verne W. Brown, Junior, United States Navy; Lieutenant (junior grade) Leonard B. Di Napoli, United States Navy; Lieutenant (junior grade) Thomas L. Neilson, United States Navy; Lieutenant (junior grade) Horace A. Thomsen, United States Navy; Ensign Robert P. Armstrong, United States Navy; Chief Boatswain Anthony S. Ciccone, United States Navy; Boatswain Earl L. Hause, United States Navy; Joseph G. Pardovich, chief boatswain's mate, United States Navy; Robert D. Clendenon, chief musician, United States Navy; Carl F. Heine, chief machinist's mate, United States Navy; Gilbert H. Dobler, chief photographer's mate, United States Navy; Myrl A. Yeaman, chief

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photographer's mate, United States Navy; Crisanto Dolor, chief cook, United States Navy; Master Sergeant Lionel E. Simmons, United States Marine Corps; Willie F. Maguire, chief signalman, United States Navy; Donald K. Lobdell, chief radioman, United States Navy; Gorman "T" Perry, motor machinist's mate, first class, United States Navy; Jack O. Montgomery, boatswain's mate, second class, United States Navy; Charles R. Dickinson, boatswain's mate, third class, United States Navy; Lawrence H. Wasser, musician, third class, United States Navy; Gordon C. Wyman, fire controlman, third class, United States Navy; Robert Charles Vail, shipfitter, third class, United States Navy; Delmere B. Blackburn, private, first class, United States Marine Corps; Paul Hermann, seaman, first class, United States Navy; James E. McCall, seaman, first class, United States Navy; Charles H. Kilpatrick, seaman, first class, United States Navy; Clifford E. Kintner, seaman, first class, United States Navy; Bernard I. Landau, seaman, first class, United States Navy; Harold A. Masters, seaman, first class, United States Navy; Kenneth Karl Hrabal, seaman, first class, United States Navy; Nicholas Vignovich, seaman, first class, United States Naval Reserve; Leonard Stanley Tur, fireman, first class, United States Naval Reserve; L. R. Weedle, fireman, first class, United States Navy; R. N. Young, fireman, first class, United States Navy; and Michael Strusinski, coxswain, United States Naval Reserve.

SEC. 2. The following-named members of the naval service are hereby authorized to accept such awards as have been tendered them by foreign governments as of the date of the approval of the Act: Rear Admiral Edward W. Hansen, United States Navy; Captain Albert E. Fitzwilliam, United States Navy; and Lieutenant (junior grade) John E. Nichols, United States Navy.

SEC. 3. Doctor Mina S. Rees, a civilian employee of the Navy Department, is hereby authorized to accept and wear the King's Medal for Service in the Cause of Freedom which has been tendered her by the Government of Great Britain.

Passed the Senate February 8, 1949.

Attest: LESLIE L. BIFFLE, *Secretary.*

Mr. DURHAM. Captain McDill is the witness on this bill. Captain, you may proceed.

STATEMENT BY CAPT. A. S. McDILL, UNITED STATES NAVY OFFICE OF JUDGE ADVOCATE GENERAL, NAVY DEPARTMENT

Captain MCDILL. Mr. Chairman, S. 632 is a bill to authorize certain personnel and former personnel of the Naval Establishment to accept certain gifts and a foreign decoration tendered by foreign governments.

The acceptance of these gifts and decorations, the committee will recall, is forbidden by the Constitution in article 1, section 9, clause 8 which recites that no title of nobility shall be granted by the United States and no person holding any office of profit or trust under them shall without the consent of Congress accept any present, emolument, office, or title of any knid whatever from any king, prince, or foreign state.

The Navy Department has interpreted this to include enlisted men as well in the receipt of these gifts. Also personnel who are active, inactive, or retired are included, by departmental construction.

Mr. ARENDS. Captain, might I interject there just a moment to ask you a question. Why does this apply only to the Naval Establishment?

Captain MCDILL. It applies to everyone, sir. The Secretary of Defense, as a procedural matter, has authorized the Departments to take and present to Congress lists of their personnel in each Department.

Mr. ARENDS. In each Department?

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Captain McDILL. Yes, sir.

Mr. ARENDS. Then there would be a separate bill for each department?

Captain McDILL. Yes, sir. They are scrutinized by the Department of State, by the individual service Department concerned, and forwarded to Congress, in the nature of private relief legislation, without cross-coordination.

Mr. ARENDS. My only thought was: In dealing with this matter we will have to deal with three specific bills—one for each Department—instead of dealing with one.

Captain McDILL. Yes, sir.

Mr. ARENDS. That was the only purpose of my inquiry. Go ahead, sir.

Captain McDILL. At the present time there are certain gifts and decorations from foreign nations to personnel of the Naval Establishment that are being withheld by the Department of State, which is the depository in this case, pending appropriate legislation or obtaining the consent of Congress, in constitutional terms.

Now, these gifts include a barometer, gold watches, pieces of plate, and cigarette cases, awarded to naval personnel at various times since 1935. While the reason for giving three of these presents is unknown, the others are tokens of appreciation, such as those items the Danish Government presented to two naval officers for training Danish personnel at the naval air station in Jacksonville, Fla.

The Icelandic Government gave 10 awards for the aid to the Icelandic motor vessel *Laxfoss* on January 10, 1944, when a Navy invasion boat rescued the passengers and crew of that vessel when she was stranded by night off Reykjavik during a severe snowstorm.

Prince Saud of the Saudi Arabian Government has presented gifts to various officers and enlisted men of a naval task force recently in the Mediterranean.

These gifts are in keeping with the precedent created by similar gifts to the navies of other countries.

Foreign decorations involve the King's Medal for service in the cause of freedom awarded by the British Government to Dr. Mina S. Rees, the head of the Mathematics Branch of the Office of Naval Research, Navy Department, for her contributions in the field of mathematical research during World War II. Dr. Rees is the only civilian serving in the Navy Department in a civil-service status receiving an award.

Now, these gifts and decorations——

Mr. DURHAM. Do you interpret the present law as preventing civilians from receiving awards?

Captain McDILL. If they hold an office of trust or profit under the United States, sir.

Now, these gifts and decorations are at present in the custody of the State Department, pending congressional approval for their acceptance.

Other decorations included would be the Cross of Naval Merit by Peru and two awards of the Order of Naval Merit and Diploma by Brazil.

Enactment of this legislation would result in no cost to the Government. The Navy Department has been authorized to sponsor this proposal on behalf of the Naval Establishment, and the Bureau of the

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Budget has stated there would be no objection to the submission of this proposed legislation.

There are a total of 71 naval personnel, including Dr. Rees. They are broken down into 2 rear admirals, 6 captains, 15 commanders, 8 lieutenant commanders, 9 lieutenants or junior grade lieutenants, 1 ensign, 2 warrants, and 28 enlisted men of various ratings, as well as Dr. Rees.

Mr. ARENDS. What is the total, did you say, Captain?

Captain MCDILL. 71.

Mr. DURHAM. What is going to happen in the future? Suppose somebody goes overseas and is given medals later on. Will this authorize their acceptance?

Captain MCDILL. No, sir; it will require additional legislation.

Mr. DURHAM. Each time?

Captain MCDILL. Each time, sir.

Procedurally this is what is done: When the State Department has received a number of them and scrutinized them as to their acceptance being appropriate in the interest of the United States, they will then refer them to the Navy Department with their approval and the Navy Department will seek the necessary consent.

Mr. DURHAM. Where do they get the authority, if present law prevents them from accepting these awards or medals to begin with?

Captain MCDILL. It is a matter of what might be termed international comity, sir. It would be undiplomatic to refuse to be present at a presentation. There would be a considerable loss of what the Chinese call face if the individual or the officer didn't appear.

Mr. DURHAM. Off the record.

(Statement by Mr. Durham made outside the record.)

Mr. ARENDS. Take this off the record, too.

(Statement by Mr. Arends made outside the record.)

Mr. HARLOW. I suggest that we go back on the record, sir.

Mr. DURHAM. On the record.

Mr. HARLOW. There is a substantial policy question involved in this which has been met many times by the Congress. This is not a new procedure in any way. However, there is always, in every one of these items, a policy question for the Congress to keep in mind.

The constitutional provision was established, of course, for a specific very fine purpose. That was to prevent the obligation of American military or diplomatic personnel overseas to foreign countries through their receipt of gifts.

Mr. DURHAM. How does the State Department handle this now?

Mr. HARLOW. The State Department, sir, is the depository where these gifts are received, until they can be legally accepted.

Mr. DURHAM. I mean, if something is tendered our diplomats, do they receive it under the present law and accept it? Is it theirs, or do they have to go through the procedure of getting special permission from the Congress?

Mr. HARLOW. It is my understanding that State Department personnel received these gifts and accepted them——

Mr. ARENDS. Members of the State Department——

Mr. HARLOW. From King Saud——

Captain MCDILL. I think we are talking at cross purposes. I believe your question was directed to: Can a diplomat receive such a gift?

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Mr. DURHAM. That is right.
Captain MCDILL. He can, according to the Constitution, if he obins the consent of Congress. But—I would like this off the record cause I don't speak for the State Department——
Mr. DURHAM. Off the record.
(Statement by Captain McDill made outside the record.)
Mr. ARENDS. There has been a precedent for this bill many times the past?
Mr. HARLOW. It is a normal procedure to request congressional approval for this type of thing.
Mr. ARENDS. I can see how some of these things should be accepted.
Mr. HARLOW. Yet, on the other hand, sir, is the proposition that each one of these items the Congress legalizes the acceptance of a ft to American military personnel by foreign countries. Because is could lead to abuse is the reason for the constitutional provision. I don't mean to infer here, Mr. Chairman that the bill is undesirable. seek only to make the policy question very clear.
Mr. DURHAM. This bill would apply only to this group.
Mr. ARENDS. Seventy-one.
Mr. DURHAM. Of course, we would require further legislation if other group came in.
Mr. HARLOW. Yes, sir.
Mr. DURHAM. But I would like to know what the policy of the State epartment is. Now, a clerk receives his emoluments and his pay om the United States. Is he restricted by the same provision of w that the man in the service is, or the civilian personnel that you entioned here in regard to the mathematics award?
Mr. HARLOW. Yes, sir.
Mr. DURHAM. He comes under the same law?
Mr. HARLOW. It is a constitutional provision; yes, sir.
Mr. DURHAM. Well, have they ever asked for any special legislaon—the State Department—from the Congress?
Mr. HARLOW. I do not know, sir. I have never seen one, but I nnot say that it has never been done.
The services, however, have always followed this practice of obtaing congressional approval in specific instances.
I do raise the question here—in one place the Navy Department tes very frankly that it does not know why three of these gifts ere tendered.
Mr. DURHAM. Why what?
Mr. HARLOW. Why three of these gifts were tendered. The urpose of the constitutional provision requiring the Departments to ome to the Congress on these matters was to insure that the Congress ould understand precisely why the gifts were tendered.
I gather—and the captain will correct me if I am mistaken—that hose who received the gifts for unknown purposes are included.
Captain MCDILL. That is correct.
Mr. HARLOW. And I question the wisdom of that as a precedent.
Mr. ARENDS. Well, why wouldn't the Department insist on knowng that?
Captain MCDILL. As I said, these gifts stem back to 1935, and it is ossible that the reason for presenting the gift to the individual was ot set out.

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I have prepared here for the use of the committee a tabulation showing the individual, his rank, foreign government, and what the gift is.

Mr. ARENDS. Does that include the three that were just mentioned?

Captain McDILL. Yes, sir; that includes everybody.

Mr. ARENDS. I see no reason why the recipient of such a gift shouldn't openly declare the reason why he was receiving it.

Captain McDILL. Oftentimes they do not know themselves. It is just a magnanimous gesture. For example, you are invited to lunch at Prince Saud's palace and at the conclusion of the lunch you are presented with a gold watch. I don't know that that happened in the case of the Arabian award, but often things like that do happen in these foreign countries.

Mr. SASSCER. This is off the record.

(Statement made by Mr. Sasscer outside the record.)

Mr. BLACKNEY. No constitutional amendment is necessary because Congress has the power, should it so desire, to approve the acceptance of a gift?

Captain McDILL. That is our understanding of coming to Congress to obtain the consent of that body.

Mr. BLACKNEY. Yes.

Mr. ARENDS. Captain, just read two or three of those items.

Captain McDILL. May I start off with Admiral Martin——

Mr. ARENDS. And will you put them in the record.

Captain McDILL. Yes, sir.

Mr. ARENDS. The compilation you have.

Captain McDILL. Yes, sir.

Admiral Martin, from Prince Saud of the Saudi Arabian Government: He gets one brown camel hair ceremonial robe; one cashmere scarf; one gold thread head rope; one gold watch; one Arabian gold-hilted sword and scabbard; two Arabian horses, male and female, at present in the custody of Amir Bin Jiluwa at Saudi Arabia—Mr. Peurifoy denies they are in the State Department—and two Arab style cloth saddles.

Mr. SASSCER. When you say "in the custody of," do you mean they hold physical possession of the gift until it is approved by Congress?

Captain McDILL. Yes, sir.

Mr. DURHAM. This is off the record.

(Statement by Mr. Durham made outside the record.)

Mr. HARLOW. Incidentally, Mr. Chairman, there is also to be borne in mind the fact that this country has the Medal of Freedom which it bestows on foreign diplomats, as you know.

Mr. SASSCER. Isn't this practice more or less customary? This practice isn't confined to the military personnel of the United States. I assume that Prince Saud makes the same type of gifts to various other officers of different countries, such as Britain, France, and so forth.

Captain McDILL. That is correct, Mr. Sasscer.

Mr. SASSCER. As far as you know, they are accepted freely by those gentlemen?

Captain McDILL. They are, sir.

Mr. ARENDS. Read a couple of gifts that have been bestowed on the boys with lesser rank.

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Captain McDILL. To Captain Brust, a piece of plate. To a Commander Carmody, a gold watch. Watches predominate. To a Commander Knowlton, an aneroid barometer, from Canada.

Among the enlisted men, gold watches from the Arabian Government and a cigarette case in the case of a chief machinist mate from the Icelandic Government. That seems to be about the scale of gifts: Gold watches from the Arabian Government and cigarette cases from Iceland.

Mr. DURHAM. Are you through, Captain?

Captain McDILL. Yes, sir.

Mr. DURHAM. Does that complete your statement?

Captain McDILL. Yes, sir.

(The compilation referred to is as follows:)

Name	Rank	Foreign government or sovereign	Description of gift
[illegible]ld M. Martin	Read admiral	Prince Saud of the Saudi Arabian Government.	1 brown, camel-hair ceremonial robe. 1 cashmere scarf. 1 gold thread head rope. 1 gold watch. 1 Arabian gold hilted sword and scabbard. 2 Arabian horses, male and female, in custody of Amir Bin Jiluwa at Saudi Arabia. 2 Arab style cloth saddles.
[illegible]am R. Brust	Captain	Great Britain	Piece of plate.
[illegible]nett W. Wright	do	Prince Saud of the Saudi Arabian Government.	1 Arabian robe. 1 set of head ropes. 1 cashmere shawl. 1 dagger.
[illegible]s C. Wright	do	do	1 gold watch. 1 Arabian robe. 1 set of gold head ropes. 1 cashmere shawl. 1 dagger and scabbard.
[illegible]rd W. Ruble	do	do	1 gold watch. 1 gold handled dagger with 2 jewels insert. 1 gold scabbard with jewel insert. 1 camel-hair cape, full length, woven with gold design. 1 cashmere scarf headdress. 1 gold head rope. 1 gold watch.
[illegible]rt F. Carmody	Commander	do	Do.
[illegible]s I. Cone	do	do	1 Arabian robe. 1 cashmere shawl. 1 gold head rope. 1 dagger and scabbard. 1 gold watch.
[illegible] Dean	do	do	Do.
[illegible]n Fowler	do	do	Gold Arabian watch.
[illegible]rd L. Fowler	do	do	Gold head rope. Gold dagger. Camel wool robe. Cashmere shawl. 1 gold watch.
[illegible]R. Hausman	do	do	Do.
[illegible]r L. Kauffman	do	do	Aneroid barometer.
[illegible]e A. Knowlton	do	Canada	1 gold watch.
[illegible]P. Lunger	do	Prince Saud of the Saudi Arabian Government.	Do.
[illegible]M. Milner	do	do	Do.
[illegible]r G. Raysbrook	do	do	Do.
[illegible]rick M. Stiesberg	do	do	Do.
[illegible]m A. Stuart	do	do	1 Arabian Thobe. 1 Arabian Khafia.
[illegible]rd S. Rogers	do	do	1 Arabian Agall. 1 Arabian robe. 1 cashmere shawl. 1 head rope. 1 dagger and scabbard.
[illegible]rge R. Lee	do	do	

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Name	Rank	Foreign government or sovereign	Description of gift
Raymond A. Boyd	Lieutenant commander	Prince Saud of the Saudi Arabian Government.	1 camel hair, gold embroidered robe. 1 white shawl. 1 head rope, 2 strand, gold.
Laurence B. Green	do	do	1 camel-wool robe. 1 cashmere shawl. 1 gold head rope.
Melvin C. Hoffman	do	do	1 silk, gold threaded Arabian headdress. 1 cashmere shawl. 1 gold braided, brown camels hair rope.
Victor A. Moitoret	do	do	1 gold watch.
John C. O'Connor	do	do	Do.
Henry Nelson	do	Great Britain	Piece of plate.
Norman L. Paxton	do	Denmark	Cigarette case.
Byron G. Shepple	do	Prince Saud of the Saudi Arabian Government.	1 gold watch.
James J. Bott	Captain	do	Do.
Irwin J. Vanderswag	Lieutenant	do	Do.
George H. Belk	do	do	Do.
Samuel Hopkins, Jr	do	Denmark	Cigarette case.
Jack Scott	do	Prince Saud of the Saudi Arabian Government.	1 gold watch.
LaVerne W. Brown, Jr	Lieutenant (junior grade).	do	Do.
Leonard B. Di Napoli	do	do	Do.
Thomas L. Neilson	do	do	White woolen scarf. Black woven headrope.
Horace A. Thomsen	do	Great Britain	Gold watch.
Robert P. Armstrong	Ensign	Prince Saud of the Saudi Arabian Government.	1 gold watch.
Anthony S. Ciccone	Chief boatswain	do	Do.
Earl L. Hause	Boatswain	Iceland	Do.
Joseph G. Pardovich	Chief boatswain's mate	do	Cigarette case.
Robert D. Clendenon	Chief musician	Prince Saud of the Saudi Arabian Government.	1 gold watch.
Carl F. Heine	Chief machinist's mate	Iceland	Cigarette case.
Gilbert H. Dobler	Chief photographer's mate.	Prince Saud of the Saudi Arabian Government.	1 gold watch.
Myrl A. Yeaman	do	do	Do.
Crisanto Dolor	Chief clerk	do	Do.
Lionel E. Simmons	Master sergeant	do	Do.
Willie F. Maguire	Chief signalman	do	Do.
Donald K. Lobdell	Chief radioman	do	Do.
Gorman "T" Perry	Motor machinist's mate (first class).	do	Do.
Jack O. Montgomery	Boatswain's mate (second class).	do	Do.
Charles R. Dickinson	Boatswain's mate (third class).	do	Do.
Lawrence H. Wasser	Musician (third class)	do	Do.
Gordon C. Wyman	Fire controlman (third class).	do	Do.
Robert C. Vail	Ship fitter (third class)	Iceland	Cigarette case.
Delmere B. Blackburn	Private (first class)	Prince Saud of the Saudi Arabian Government.	1 gold watch.
Paul Hermann	Seaman (first class)	do	Do.
James E. McCall	do	do	Do.
Charles H. Kilpatrick	Seaman (first class)	do	Do.
Clifford E. Kintner	do	do	Do.
Bernard I. Landau	do	do	Do.
Harold A. Masters	do	do	Do.
Kenneth K. Hrabal	do	Iceland	Cigarette case.
Nicholas Vignovich	do	do	Do.
Leonard S. Tur	Fireman (first class)	do	Do.
L. R. Weedle	do	do	Do.
R. N. Young	do	do	Do.
Michael Strusinski	Coxswain	do	Do.
Edward W. Hanson	Radarman	Peru	Cross of Naval Merit (grand officer).
Albert E. Fitzwilliam	Captain	Brazil	Order of Naval Merit and Diploma (comendador).
John E. Nichols	Lieutenant (junior grade).	do	Order of Naval Merit and Diploma (cavaleiro).
Mina S. Rees	Doctor (civilian)	Great Britain	King's Medal for Service in the Cause of Freedom.

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Mr. DURHAM. Is there anyone else to submit testimony on this legislation?

Mr. HARLOW. No, sir.

Mr. SASSCER. I move a favorable report.

Mr. ARENDS. I second the motion.

Mr. DURHAM. Without objection, it is so ordered. The bill is reported favorably to the full committee.

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[No. 20]

SUBCOMMITTEE HEARINGS ON S. 673, RELATING TO THE PAY AND ALLOWANCES OF OFFICERS OF THE NAVAL RESERVE PERFORMING ACTIVE DUTY IN THE GRADE OF REAR ADMIRAL, AND FOR OTHER PURPOSES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 3,
Tuesday, February 15, 1949.

The subcommittee met at 10 a. m., Hon. Carl T. Durham (chairman) presiding.

Mr. DURHAM. The next bill is S. 673, companion bill to H. R. 2426. (S. 673 is as follows:)

[S. 673, 81st Cong., 1st sess.]

AN ACT Relating to the pay and allowances of officers of the Naval Reserve performing active duty in the grade of rear admiral, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any officer of the Naval Reserve serving in the grade of rear admiral shall receive the pay and allowances prescribed by law for rear admirals of the upper half when any officer of the active list of the line of the Regular Navy, junior to him, is in the upper half of the list of rear admirals: *Provided*, That the provisions of this Act shall not apply to officers of the Naval Reserve while on any lineal list established pursuant to title III of the Officer Personnel Act of 1947: *Provided further*, That no back pay or allowances shall be held to have accrued under the provisions of this Act for any period prior to the date of its approval.

Passed the Senate February 8, 1949.

Attest: LESLIE L. BIFFLE, *Secretary.*

Mr. DURHAM. Captain McDill?

Captain MCDILL. Commander Martineau will testify on this measure.

Mr. DURHAM. Oh, yes, Commander Martineau.

Commander MARTINEAU. Mr. Chairman.

Mr. DURHAM. Commander, will you give us the explanation of this bill and why it is needed.

Commander MARTINEAU. I shall try, sir.

I have a short statement which I would like to read and then submit to any questions that you might have.

STATEMENT BY COMMANDER DAVID L. MARTINEAU, BUREAU OF NAVAL PERSONNEL, NAVY DEPARTMENT

Commander MARTINEAU. Existing law permits Naval Reserve officers to attain the grade of rear admiral, but the Comptroller General has held that such officers may not receive the pay of the upper half under any conditions for the reason that no statutory provision affirmatively provides for it. Any rear admiral of the upper

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half receives the pay of a major general, while one of the lower half receives that of a brigadier general.

Section 315 of Public Law 381, Eightieth Congress, was intended to authorize upper half pay for any Reserve rear admiral assigned to a Regular Navy billet. However, the Comptroller General's office has advised that the language employed in the said section 315 is not adequate for that purpose.

Appropriate amendment to that section has been drafted for inclusion in other necessary amendments to Public Law 381.

The proposed amendment to Public Law 381 will not, however, apply to reservists on active duty in connection with the organization and administration of the Naval Reserve.

I should like to point out there, Mr. Chairman, that that category of reservists just referred to are not paid for out of the Regular Navy appropriation. There is a separate appropriation covering Naval Reserve organization, training, and administration, and reservists who are on active duty in connection with such training of Reserves are paid out of that appropriation.

Since there is now one rear admiral of the Naval Reserve on active duty in that status, with precedents of Regular Navy rear admirals entitled to upper half pay, this bill is proposed in order that the officer concerned as well as others who may be assigned to similar active duty may receive pay equal to that of other rear admirals with whom they have precedent on the lineal list.

This bill, Mr. Chairman, has already passed the Senate without amendment, a bill similar to the one now before you: H. R. 2426. However, it has been brought to our attention that there is probably a slight omission in the language of this bill that might be subject to a misinterpretation, and I suggest for the consideration of your committee that you consider this amendment:

In line 4 of the bill, after the word "shall" add a comma and insert the following words: "when otherwise entitled to receive active duty pay and allowances,".

The purpose of this amendment I have just suggested, Mr. Chairman, I believe is quite apparent to you and it is to prevent this bill, if it were enacted, from being interpreted in such a manner that any such naval reserve rear admiral regardless of whether he was on active duty would be entitled to get the full active duty pay.

Obviously the intent of the bill is only to give him this pay when he is entitled to it for active services rendered.

Mr. ARENDS. Commander was this question discussed at all in connection with the pay bill last year?

Commander MARTINEAU. Do you mean the Reserve pay bill?

Mr. ARENDS. Yes.

Commander MARTINEAU. Public Law 460?

Mr. ARENDS. Yes.

Commander MARTINEAU. Public Law 460, Mr. Arends, among other things, amended section 14 of the Pay Readjustment Act of 1942, which is the basic authority for this, but the Comptroller General has ruled that that language is not appropriate.

It is really quite unjust if we were to say and to continue the practice that no rear admiral of the Naval Reserve could get the pay of the upper half. That would be just like telling the Army, for instance,

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hat no Army or Air Force reservist could ever receive the pay of a ıajor general.

This bill seeks to correct that situation.

This bill, I should also like to add, has been coordinated within the ;ational Military Establishment and is in accordance with the pro-ram of the President.

Mr. DURHAM. You have just one man to whom this would apply at he present time?

Commander MARTINEAU. Yes, sir.

Mr. DURHAM. One rear admiral?

Commander MARTINEAU. One rear admiral on active duty.

Mr. DURHAM. The bill would take care of future appointments in ıis position of rear admiral from the Reserve?

Commander MARTINEAU. When they obtain such seniority that ɔmeone junior to them in the Regular Navy——

Mr. DURHAM. He would have to qualify by seniority and precednce, with the Regular officer?

Commander MARTINEAU. That is correct.

Mr. DURHAM. All right.

Mr. HARLOW. Mr. Chairman, the amendment suggested is, of ourse, necessary if the committee desires to report the bill.

I invite the committee's attention to the proviso on line 8, which -lates to the promotion bill—the Officer Personnel Act of 1947—hich states that this act will not apply to rear admirals who are on xtended active duty and on the lineal lists established by the Per-onnel Act.

The intent of that provision is to maintain a delineation between fficers paid under appropriations for the Naval Reserve and officers aid out of general appropriations for the Navy, and it was included ere for that purpose.

The reason I mention it at this point is to have the record show the act that it is not the intent of that provision, in itself, to preclude uch payments to such rear admirals who are on these lineal lists.

It is my understanding that the Navy Department will attempt to ponsor an amendment to the Officer Personnel Act during this ongress to insure that that act will also permit the pay of the upper alf to rear admirals on those lineal lists.

Otherwise, I can see no objection to the proposed bill, sir.

Mr. DURHAM. Any questions, Mr. Sasscer?

Mr. SASSCER. No.

Mr. DURHAM. Mr. Blackney?

Mr. BLACKNEY. No.

Mr. DURHAM. Without objection, the bill as amended will be eported favorably to the full committee.

Is that all before the committee this morning?

Mr. HARLOW. Yes, sir.

Mr. DURHAM. The committee is adjourned.

(Whereupon, at 10:55 a. m., the committee adjourned.)

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MAR 10 '49

[No. 21]

TO PROVIDE FOR THE CONSTRUCTION, REHABILITATION, EXPANSION, CONVERSION, AND JOINT UTILIZATION OF BUILDINGS, STRUCTURES, UTILITIES, AND OTHER FACILITIES, INCLUDING THE ACQUISITION OF LAND, FOR THE RESERVE COMPONENTS OF THE NATIONAL MILITARY ESTABLISHMENT OF THE UNITED STATES, AND FOR OTHER PURPOSES. (H. R. 2824) MR. RIVERS

THE SECRETARY OF DEFENSE,
Washington, February 10, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Army recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To provide for the construction, rehabilitation, expansion, conversion, and joint utilization of buildings, structures, utilities, and other facilities, including the acquisition of land, for the reserve components of the National Military Establishment of the United States, and for other purposes."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Army.

Sincerely yours,

JAMES FORRESTAL.

DEPARTMENT OF THE ARMY,
Washington, D. C., February 10, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith draft of a bill to provide for the construction, rehabilitation, expansion, conversion, and joint utilization of buildings, structures, utilities, and other facilities, including the acquisition of land, for the Reserve components of the National Military Establishment of the United States, and for other purposes, which the Department of the Army recommends be enacted into law. The Secretary of Defense has assigned responsibility for the preparation and submission of this measure on behalf of the National Military Establishment, to this Department.

The purpose of the proposed legislation is to authorize the Secretary of Defense to provide for the construction, rehabilitation, expansion, conversion, and purchase or lease of buildings, structures, utilities, and other facilities, including the acquisition of land or appropriate interest therein, as may be necessary to develop, train, equip, operate, and maintain the Reserve components of the National Military Establishment of the United States.

The shortage of buildings and other facilities has been one of the greatest obstacles in the implementation of the organization and training program of the Reserve components of the National Military Establishment. New construction and joint utilization of armories and facilities by all of the Reserve components of the National Military Establishment will alleviate present conditions.

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No accurate estimate of the cost of the proposed legislation can be offered at this time. The execution of these plans will depend upon the strength and state of training of the Reserve components, and appropriations from year to year. The provisions of this bill with respect to joint utilization of facilities, under the supervision of the Secretary of Defense, will result in substantially smaller expenditures than would be required for programs of the several services individually.

This proposed legislation has been coordinated among the departments and boards in the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has been consulted and advises that there is no objection to the submission of this proposed legislation for the consideration of the Congress.

Sincerely yours,

WILLIAM H. DRAPER, Jr., *Army.*
Acting Secretary of the

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MAR 1

[No. 22]

FULL COMMITTEE HEARING ON H. R. 2216, TO AMEND THE NATIONAL SECURITY ACT OF 1947 TO PROVIDE FOR AN UNDER SECRETARY OF DEFENSE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Wednesday, February 16, 1949.

The committee met at 10 a. m., Hon. Dewey Short presiding.

Mr. SHORT. The committee will be in order.

Because this is a rather unusual procedure, I feel not only highly honored but almost embarrassed to be presiding on this committee—I suppose because our broad-minded, tolerant, and very generous chairman takes pity on a few of us in the minority.

I might say, Chairman Vinson, with your permission, at the outset, and for the benefit of the new members of the committee, that the older members of this committee who have followed very closely the activities of Secretary Forrestal through the trying war years, first as Under Secretary of the Navy, then as Secretary of the Navy, and particularly through this most difficult postwar period since the passage of the Unification Act, have admired his outstanding ability. We have only the deepest gratitude for the very valuable and efficient service that he has rendered. He has one of the toughest jobs, I think, in the whole Government.

The bill we have before us this morning, H. R. 2216, is a very short and a simple bill. If enacted into law, I think it will relieve the overburdened Secretary of our National Defense of many of the onerous duties and responsibilities that are now his. The legislation will not increase any of his powers, but it will allow him to share some of his burdens with the Under Secretary.

(H. R. 2216 is as follows:)

[H. R. 2216, 81st Cong., 1st sess.]

A BILL TO AMEND THE NATIONAL SECURITY ACT OF 1947 TO PROVIDE FOR AN UNDER SECRETARY OF DEFENSE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 202 of the National Security Act of 1947 approved July 26, 1947 (61 Stat. 495; 5 U. S. C., sec. 171a), is amended by adding at the end thereof the following new subsection:

"(d) There shall be an Under Secretary of Defense, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall perform such duties, and shall exercise such powers, as the Secretary of Defense may prescribe. The Under Secretary shall act for, and exercise the powers of, the Secretary of Defense during his absence or disability."

SEC. 2. Subsection (a) of section 301 of such Act (5 U. S. C., sec. 171b), is amended by adding at the end thereof the following:

"The Under Secretary of Defense shall receive the compensation prescribed by law for Under Secretaries of executive departments."

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Mr. SHORT. Now, Secretary Forrestal, the committee will be very happy to hear anything you have to say concerning this particular piece of legislation.

STATEMENT BY JAMES FORRESTAL, SECRETARY OF DEFENSE

Secretary FORRESTAL. Mr. Chairman, as always I am grateful for the opportunity to appear before this committee. I wish to record my appreciation of your remarks, and thank you for them.

Mr. Chairman and members of the committee, this marks my first formal appearance before you at this session of Congress. Your full committee and its subcommittees have already held hearings, however, on a number of legislative items that are included in the over-all legislative program of the National Military Establishment. Among these items are the bill to provide authorized strengths for the Army and the Air Force, the bill to provide a "radar fence," and the bill to provide a long-range proving ground for guided missiles.

The bills I have just mentioned were approved by me for inclusion in our over-all legislative program, and were then delegated to one or the other of the three military Departments, with the designated Department having the responsibility for submitting the bill to Congress on behalf of the National Military Establishment as a whole.

I believe that this system of delegating to the military departments the responsibility for a large number of specific legislative items is working well. But both in the legislative field and elsewhere there are many matters which the Secretary of Defense cannot delegate to one of the departmental secretaries. Up to the present time, the Secretary of Defense has had to assume personal responsibility for all of these items that could not be delegated. The result, in terms of the carrying of the work load by any one individual, has not been good—and among my other recommendations for changes in the National Security Act, therefore, I have included a recommendation for an Under Secretary of Defense. And I am grateful for the opportunity to present very briefly my case for the passage of this bill.

In my annual report to the President and the Congress, I described my concept of an Under Secretary of Defense in the following words:

> The Under Secretary should exercise such responsibilities as may be assigned to him by the Secretary of Defense.

I think that corresponds with the language of the bill.

> The status of the Under Secretary as the alter ego of the Secretary and as the person who becomes Acting Secretary of Defense in the absence of the Secretary should be recognized.

The bill before you, H. R. 2216, provides for the creation of the position I have just been describing.

The need for an Under Secretary of Defense must be very clear to the members of this committee, since almost all of you have been in frequent contact with my office during the past year. The need for creation of the position of Under Secretary of Defense is so clear a need, in fact, that it probably requires only a brief presentation in support of the case.

Let me cite these facts. There are a large number of governmental bodies, or committees, on which the Secretary of Defense sits or attends meetings—I think the total is on the order of 16—and I should

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ke the privilege of submitting a list of some of the more important nes for the record, in order to complete my testimony.

Mr. SHORT. We will be glad to have it at this point.

(The data referred to is as follows:)

1. President's Cabinet.
2. National Security Council.
3. National Security Resources Board.
4. Commission on the Organization of the Executive Branch of the Government.
5. War Council.
6. Committee of Four Secretaries.
7. Munitions Board.
8. Research and Development Board.
9. Several major interdepartmental subcommittees of the National Security Council.
10. Other ad hoc interdepartmental committees.

Secretary FORRESTAL. As I have just mentioned, there are a large number of bodies, or committees, on which the Secretary of Defense sits, beginning with the Cabinet, and then going through other bodies such as the National Security Council, the National Security Resources Board, the War Council, and about 12 others, all of which require detailed attention, a great deal of preparatory work, and work which in most cases cannot be delegated.

He must be available for conferences with the Secretaries of the three Departments of the Army, the Navy, and the Air Force.

He is responsible for the preparation of the military budget—for its submission to the President, and for oral testimony in the course of hearings by the Congress in connection with the amounts to be appropriated.

He must be available for testimony before congressional committees on a broad area of legislative items of over-all concern to the Military Establishment.

He must take the initiative in a great many fields which do not receive great public attention, but which are basic to the progress of unification—fields such as the preparation of a uniform code of military justice, which will come before your committee in due course, and I think upon which you have already been informed; common hospital and medical practices, and the solution of such problems as the current one stemming from the shortage of doctors and dentists, which is a very serious one for the services; supervision of planning in such fields as civilian defense, protection against methods of unconventional warfare; and the preparation of a legislative program for the National Military Establishment as a whole.

I may say, in passing, that one of the purposes of unification, of course, was to secure economy. The methods of securing economy are a complex and difficult task. We have taken substantial steps in achieving economies. The total measured against the whole subject is not impressive when I say that I am talking in terms of 25 to 50 million dollars, but it is the beginning process, and it has to be attacked not with an ax but by a process of selection and care.

Mr. SHORT. At least you are heading in the right direction.

Secretary FORRESTAL. I believe so, Mr. Short.

In addition, during the past year I have had to spend a substantial part of my time in getting individuals to come to Washington on particular assignments. As you gentlemen know, it is much easier to talk about the desirability of efficiency and competence in the Federal

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Government than it is to secure the individuals to implement such plans. During the past year I have had to secure, or assist the President in securing, a replacement for Mr. Hargrave as Chairman of the Munitions Board, and a replacement for Dr. Bush as Chairman of the Research and Development Board. We had to get an individual to conduct a very thorough study on civilian defense, a job which was ably done by Mr. Russell Hopley. Likewise, an experienced person is required to head the Armed Forces Medical Advisory Committee, which is now dealing with the very complex problems of the medical services. The individual secured was Mr. Charles P. Cooper, head of the Medical Center, New York City.

These are only a few of the places that have to be filled by competent people. Filling most of them required a long and painstalking search, before we found the combination of competence, availability, and above all a willingness to accept the responsibility.

I don't mean to imply that there was any lack of patriotism or zeal; but the combination of the time of life which happens to apply to most men that you seek for—which is a time in which they are already engaged in many and serious responsibilities in their own communities—considerations of health and of drafts upon their time and effort make it difficult to secure their services. And each of those instances requires a rather substantial amount of time and persuasive effort.

In the case of the Munitions Board, I believe it is fair to say that I talked directly or through other persons with not less than 50 people before deciding to draft the services of an extremely competent man, Mr. Donald Carpenter, who was already with us in the capacity of Chairman of the Military Liaison Committee to the Atomic Energy Commission.

A recital of difficulties is not always the best way to demonstrate the need for additioal help, but in this case the facts are so massive that I feel justified in citing them.

The entire weight of the Military Establishment focuses upon the Office of the Secretary of Defense, and there is no way of deflecting those responsibilities. The creation of the position of Under Secretary is far from being the entire solution to the working out of the problems of the Military Establishment, but it will strengthen civilian control and will go a long way toward furnishing part of the immediate help which is needed.

Some of the other highly important things which are also needed were outlined by me in my annual report to the President and the Congress, and need not be repeated here. President Truman will in the very near future submit to Congress his recommendations in this field. And, of course, that will receive the consideration or your committee.

To the best of my knowledge, all who have looked into our organization for national security have come to the conclusion that there is a very real need for an Under Secretary of Defense; and I hope, therefore, that it will be possible for you to take early and favorable action on H. R. 2216.

Mr. SHORT. Chairnam Vinson, I think it perhaps would be appropriate and helpful at this point to have Mr. Smart read just two or three paragraphs of the recommendation of the Eberstadt task force under the Hoover Commission. It devoted many weeks of

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serious study to this particular question, and I would like to have it in the record.

Mr. VINSON. All right.

Mr. SHORT. Just read excerpts from the Eberstadt report, corroborating what the Secretary just told us.

Mr. SMART. And with your permission, Mr. Short, I think it might be appropriate to insert a roster of the outstanding citizens who served on the Eberstadt task force.

Mr. SHORT. By all means.

Mr. SMART. And who issued this report. [Reading:]

COMMITTEE ON THE NATIONAL SECURITY ORGANIZATION

Chairman, Mr. F. Eberstadt, F. Eberstadt & Co., Inc., 39 Broadway, New York 6, N. Y.
Dr. Raymond B. Allen, president, University of Washington, Seattle 5, Wash.
Mr. Thomas Archer, vice president, General Motors Corp., Detroit, Mich.
Mr. Hanson W. Baldwin, the New York Times, New York, N. Y.
Mr. Chester I. Barnard, president, the Rockefeller Foundation, New York, N. Y.
Dr. Charles W. Cole, president, Amherst College, Amherst, Mass.
Mr. John Cowles, president, the Minneapolis Star and Tribune, Minneapolis, Minn.
Mr. James Knowlson, president, Stewart-Warner Corp., Chicago 14, Ill.
Mr. John J. McCloy, president, International Bank for Reconstruction and Development, Washington 25, D. C.
Dr. Frederick A. Middlebush, president, the University of Missouri, Columbia, Mo.
Mr. Robert P. Patterson, Patterson, Belknap & Webb, 1 Wall Street, New York, N. Y.
Mr. Lewis L. Strauss, Commission member, Atomic Energy Commission, Washington 25, D. C.
Mr. J. Carlton Ward, Jr., chairman of the board, Fairchild Engine & Airplane Corp., 30 Rockefeller Plaza, New York 20, N. Y.
Gen. Robert E. Wood, chairman of the board, Sears, Roebuck & Co., Chicago, Ill.

The Committee on the National Security Organization, a so-called task force of the Hoover Commission, whose members are enumerated on the foregoing page, made certain recommendations in their report relating to the National Military Establishment. Some of these recommendations related to the Office of the Secretary of Defense. In volume 1, page 96, the Committee states:

"A Committee study of the Secretary's schedule over a period of 30 days shows him working intolerable hours under an inordinate press of all kinds of matters. It is apparent that even as industrious and able a man as Secretary Forrestal could not continue under such a schedule, particularly in time of war; while its most disturbing feature is that it allows him inadequate opportunity for thought and reflection. It is, unfortunately, impossible to supply the Secretary with days of more than 24 hours each, but he can be provided with the assistance and organization which will free his hours from minor and routine claims and enable him to deal more effectively with major ones."

On page 97, the Committee states:

"In order to relieve him [Secretary of Defense] of an impossible burden of work, the Secretary should be provided with a civilian Under Secretary and with stronger staff and organizational assistance than he now enjoys."

On the same page, in section 28, the committee states:

"Creation of an Under Secretary of Defense to act as the Secretary's deputy and assistant in all matters of concern to him is essential. On this there was practically complete unanimity of testimony before the committee. The Under Secretary of Defense should be, so to speak, the understudy and general manager for the Secretary of Defense. He should be next to the Secretary of Defense in line of command and succession and should be the Acting Secretary of Defense—with all the powers and responsibilities thereof—in the Secretary's absence. The Committee believes it inadvisable that his responsibilities should be specifically prescribed by statute. He should perform such duties and functions as may from time to time be assigned to him by the Secretary of Defense."

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Mr. PHILBIN. Mr. Chairman.

Mr. SHORT. Yes.

Mr. PHILBIN. I move the bill be favorably reported.

Mr. VINSON. Wait 1 minute.

Mr. BROOKS. Is there any opposition to it, Mr. Chairman?

Mr. VINSON. I do not think there is any opposition, but there might be some inquiry.

Let me ask Mr. Smart this, Mr. Chairman.

Mr. SHORT. Yes.

Mr. VINSON. Is any statement made by the Eberstadt Committee with reference to the rank of the Under Secretary, when he is not serving in lieu of the Secretary, as to his standing with the other three Under Secretaries?

Mr. SMART. No, sir.

Mr. VINSON. What about that, Mr. Secretary, because that question will arise in the services?

Secretary FORRESTAL. It will arise.

My own feeling, Mr. Chairman, is that he should rank the other Secretaries in line of authority, although I think the question would only arise practically, in all probability, in the absence of the Secretary. But this individual must be capable of receiving the delegated powers of the Secretary, to give him the position to carry forward programs.

Mr. VINSON. I understand thoroughly, Mr. Secretary, when he is acting in your place, of course, he has the rank, and he is the head. But, now, when you are here, and he is here, and the other Under Secretaries are here, where would he stand with reference to the Under Secretaries in the other three Departments? I think that ought to be cleared up.

Secretary FORRESTAL. My own recommendation would be that he would outrank the Secretaries of the three Departments.

Mr. VINSON. All right. I think the record should show that it is the sense of the committee, as well as that of the Secretary, that he would rank the other Under Secretaries.

Mr. SHORT. Not merely when the Secretary is out of the country but also when they are both here.

Mr. VINSON. That is right, when they are both here. I think that ought to be clearly established.

Secretary FORRESTAL. I should like to say that where there are meetings or conferences which I delegate to the Under Secretary I feel that he would have to have the power of presiding over any group.

Mr. VINSON. That is right.

Secretary FORRESTAL. Secretaries, Under Secretaries, or whatever.

Mr. VINSON. Then, your thought would be that he would take precedence, and he would rank the Under Secretaries in the other three Departments?

Secretary FORRESTAL. Yes, sir. I think in meetings, Mr. Chairman, he would also have to have the power—I will not say the power—but he would have to have the precedence to preside where the Secretaries of the Departments were involved.

Mr. ELSTON. Mr. Chairman.

Mr. SHORT. Mr. Elston.

Mr. ELSTON. Mr. Secretary, I notice that in this bill there is no requirement that the Under Secretary shall not have been an officer on

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active duty within the past 10 years, which requirement, of course, prevails so far as the Secretary of Defense itself is concerned. I have no objection to that, but I am just wondering what your views are about it.

Secretary FORRESTAL. Well, I think to carry out the spirit of the act, and also the spirit of the traditional concept of the relation of our civilians to the military, it would probably be a good thing to make the same restriction, although in general terms I would like to see this kept as simple as possible, and with as little qualifications as we can get into it.

I think it would flow actually from the legislative record of the discussion of this whole Unification Act that it is clearly the will of the Congress to have civilian control, which means that they do not want any military officer to be either Secretary of Defense or Under Secretary.

Mr. VINSON. Mr. Chairman, may I ask a question?

Mr. SHORT. Yes.

Mr. VINSON. You would not interpose any objection to amending it, in reference to that limitation?

Secretary FORRESTAL. No, sir.

Mr. BROOKS. Mr. Chairman, may I ask a question?

Mr. SHORT. Yes. Mr. Brooks.

Mr. BROOKS. Mr. Secretary, what powers of delegation would the Under Secretary have?

Secretary FORRESTAL. Of delegation of his authority?

Mr. BROOKS. Yes.

Mr. KILDAY. You have a tough legal problem there now.

Secretary FORRESTAL. I am not a lawyer, Mr. Brooks.

Mr. BROOKS. I think it is a very important thing, though, because I can conceive this, where the Under Secretary may delegate someone to carry out some authority which you gave the Under Secretary, and you may come to a very important situation as to whether or not his representative has a definite rank, too.

Secretary FORRESTAL. Well, I think it is clear in the relationship existing between the Secretary of Defense and this official, that that relationship would have to be so close that he would always be executing the policies of the Secretary of Defense.

I do not believe, unless you allowed a cleavage and a separation of those two individuals to arise, that there would be any practical question.

Mr. BROOKS. You do not think there would be any real powers of delegation, then?

Secretary FORRESTAL. Well, take the question of industrial mobilization, or take the question of the budget. If the Secretary of Defense assigned responsibility, for example, for the method of preparation of the budget, that would be a delegation of responsibility and work. But there is always the recourse of appeal if the other Departments do not concur with the results. There would be no cutting across that.

Mr. BROOKS. You mean there would be an appeal to you?

Secretary FORRESTAL. Yes.

Mr. BROOKS. Over the head of the Under Secretary?

Secretary FORRESTAL. That is right.

But if this man is to be useful he has got to have not only the full confidence but the full support of the Secretary of Defense.

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Mr. RIVERS. In that connection why could not you say he would have the delegation of all powers by and with the approval of the Secretary?

Secretary FORRESTAL. Delegation of powers approved by the Secretary?

Mr. RIVERS. By and with the approval of the Secretary. Then you would cut all of that. If he would supersede any of those, then the appeal would be forthcoming as a matter of right.

Secretary FORRESTAL. Well, I would prefer, when this position is created, to see those powers developed out of the experience of the office, rather than to try to predict in advance what you wanted to assign it.

Mr. RIVERS. Because we ran into the same thing Mr. Brooks is talking about yesterday on the guided-missile bill, about the delegation of authority, where you delegated the Secretary of the Air Force to operate the guided-missile problem.

Secretary FORRESTAL. That might be a practice that would grow up in the form that you would follow.

Mr. SHORT. Mr. Kilday.

Mr. KILDAY. I just wanted to ask some of the good lawyers on the committee if it is not the general rule that a delegated power cannot be delegated?

Mr. ELSTON. That is right.

Mr. KILDAY. So if you delegate the power to the Under Secretary, while he would be able to use others for the administrative details—the spade work and that sort of thing—when it came to the exercise of the power delegated to him he could not delegate the power, as such, to another.

Is not that the way we want it?

Secretary FORRESTAL. In essence, Mr. Kilday, it seems to me that most of the work and the activity of the Under Secretary of Defense would take the form of recommendations to the Secretary of Defense.

Mr. KILDAY. That is right.

Secretary FORRESTAL. And by——

Mr. KILDAY. Except in his absence.

Secretary FORRESTAL. Yes; and by implication that carries the necessary power and authority.

Mr. KILDAY. I was wondering whether it would weaken or strengthen the bill to say whether he would act for and in the name of the Secretary. But I doubt whether we should complicate it.

Secretary FORRESTAL. I defer to the judgment of your legal colleagues on the committee.

I think it would accomplish the purpose probably if you said he was in the absence of the Secretary the ranking member of the Military Establishment.

Mr. KILDAY. We do that.

Mr. VINSON. There is no doubt about it.

Mr. RIVERS. But he would have that when you are absent.

Secretary FORRESTAL. Yes.

Mr. BROOKS. Mr. Secretary, answering my colleague here, however, that official would not be an official with delegated authority because he would be an official with statutory authority, under the words of the statute "shall exercise such power as the Secretary of Defense may prescribe."

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Mr. KILDAY. That is a delegated power.

Mr. RIVERS. That is delegated, right there.

Mr. KILDAY. Then, we do want him to delegate it on down the line, even to a clerk.

Mr. RIVERS. Mr. Chairman, I say he should have only such powers as the Secretary would permit him to delegate.

Secretary FORRESTAL. It seems to me the language that Mr. Brooks just read is pretty satisfactory.

Mr. RIVERS. That is right, right there.

Secretary FORRESTAL. You cannot go on delegating down to the last person in the office.

Mr. VINSON. Mr. Chairman, may I ask a question?

Mr. SHORT. Yes.

Mr. VINSON. Mr. Secretary, you made a statement that in appointing boards upon which probably the three Secretaries might be members, he would properly preside over a board. Therefore, he would act as chairman of that board. Don't you think that probably might cause a little embarrassment or a little difficulty?

Secretary FORRESTAL. It would depend on the personality, I think, and the competence of the man himself. I think if he acted with tact and consideration there would be no difficulty. And that, it seems to me, must run through and pervade this whole business.

Mr. SHORT. Mr. Cole.

Mr. COLE. Mr. Secretary, section 203 of the National Security Act says that officers of the military services may be assigned to the Secretary of Defense as his personal aides and assistants. Do you feel that *that* opportunity should be made available to the Under Secretary, or not?

Secretary FORRESTAL. Yes; I think so. I think he should be able to draw upon any ability or talent that he would find useful in carrying out his missions.

Mr. COLE. Do you suggest that in order to do that it would be necessary to amend that section I referred to?

Secretary FORRESTAL. Again, I defer to your legal judgment, Mr. Cole. But I do not think it is necessary. I think it is implicit in the relationship that this official would bear to the Secretary of Defense.

Mr. COLE. But you see it reads:

* * * officers of the armed services may be detailed to duty as assistants and personal aides to the Secretary of Defense, but he shall not establish a military staff.

Now, there might come a question of interpretation from the Comptroller General, or some place along the line, that if in the exercise of your authority you instruct certain officers to work with the Under Secretary that might be an improper or extra legal exercise of your authority?

Secretary FORRESTAL. Well——

Mr. COLE. If you feel that the Under Secretary should have the opportunity of having military aides, the same as you do, I think we better put it into the law.

Secretary FORRESTAL. Well, I would have no objection to it, Mr. Cole, but it does not seem to me to be necessary.

Mr. COLE. Well, do you feel rather strongly on the subject of whether he should have aides, or not?

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Secretary FORRESTAL. Well, out of my own experience, it is clear that any official in my post, or in this particular place, should have the right to use whatever he needs to carry out his responsibilities.

Mr. COLE. Well, I do not take it that section 203 was designed for that purpose. In the exercise of your authority as Secretary you have the right, of course, to call on anybody. But this authorized you to establish, as it says, a military personal aide.

Secretary FORRESTAL. Well, it is in the same sense that General Eisenhower is acting now as a consultant and adviser to me.

Mr. COLE. I will leave it up to you. Do you want us to amend the act, or not? I merely raise the question for consideration at this time, because if it should be done now is the time to do it.

Secretary FORRESTAL. I think the language is broad enough, Mr. Cole, to permit such action if he decides to take it.

Mr. COLE. You do not feel that section 203 should be amended?

Secretary FORRESTAL. May I communicate with the Chairman on that point?

Mr. SHORT. You would amend it, Mr. Cole, by simply adding the "Under Secretary," making it the "Secretary and Under Secretary"?

Mr. VINSON. That is right, exactly.

Mr. SHORT. Perhaps you should spell it out.

Mr. VINSON. And that is at least, Mr. Chairman, carrying out the spirit of the original act.

Mr. SHORT. You see, we never had this as a new office. It was not in existence when the law was written.

Mr. VINSON. That is right.

Mr. SHORT. So I can see no harm in spelling it out.

Secretary FORRESTAL. I was just thinking this. When the Office of the Under Secretary of the Navy was created, which, of course, is a somewhat different case, there was no specific allocation or denial. I never fet any restraint.

Mr. VINSON. Mr. Chairman, that was due to the reason that there was no restricted jurisdiction.

Secretary FORRESTAL. That is correct.

Mr. VINSON. But here, in this bill, there is a restricted jurisdiction.

Secretary FORRESTAL. Yes.

Mr. VINSON. The sum and substance of it all is that you cannot delegate to him any more powers than you have yourself.

Secretary FORRESTAL. That is right.

Mr. VINSON. So it might be, if this was not put in, that you could.

Mr. KILDAY. But would not you run into this danger of statutory construction, that you would thereby limit it to this particular thing and nothing else? Having mentioned one, it would exclude all others.

Mr. GAVIN. Read it again, will you, please, Mr. Cole?

Mr. COLE (reading):

> Officers of the armed services may be detailed to duty as assistants and personal aides to Secretary of Defense, but he shall not establish a military staff.

Secretary FORRESTAL. I think the sense of this bill is that whatever powers and privileges I may have, whatever talents I can tap in the Military Establishment, would be equally available to the Under Secretary.

Mr. SHORT. You cannot delegate any more than you have.

Secretary FORRESTAL. I would not think so.

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Mr. SHORT. It is broad enough to include it. He simply is a standby and acts in your stead.

Secretary FORRESTAL. That seems to me to be sensible.

Mr. SHORT. I think it is broad enough to cover it.

Mr. RIVERS. And, of course, during the war, Mr. Secretary, you not have a great deal of trobule—you had some trouble, but you did not have a great deal of trouble—like you would have in peacetime on the delegated powers in connection with the General Accounting Office. We want to fix it so that whenever you give a man a job he will not have to be running to you every 2 or 3 minutes during the day and worrying you to death. That is the reason for this authority.

Secretary FORRESTAL. That is right.

Mr. SHORT. It seems to me the intent is very clear and convincing. At the top of page 2 it states:

The Under Secretary shall act for and exercise the powers of the Secretary of Defense during his absence or disability.

Secretary FORRESTAL. That seems to me——

Mr. SHORT. That is broad enough to cover it.

Secretary FORRESTAL. So it seems to me, Mr. Chairman.

Mr. PHILBIN. Mr. Chairman, I again move that the bill be favorably reported.

Mr. COLE. Mr. Chairman, there is another question or two that I would like to ask. I feel quite certain that the question will be asked when the bill is presented over on the floor.

The act now gives you three assistants; that is, Secretaries or assistants. Why is it that the responsibilities you envision to delegate to the other Secretaries cannot be handled by one of your present available Secretaries?

Secretary FORRESTAL. I think it is inherent in the fact that the three men I have as special assistants are men of great competence and industry. However, the title of "special assistant" to any official in Government does not carry with it the weight and the prestige sufficient to permit those individuals to preside over meetings and to carry out the necessary task that I have to get help on. I mean, for example, there are tasks such as the task of representing me on the National Security Council, possibly, or on the Resources Board, as well as others, and it must be somebody who has sufficient prestige and weight back of him.

I do not derrogate the intelligence of my special assistants. It is of a very high order, but I cannot send those gentlemen to represent me at governmental meetings, or delegate them tasks that involve relationships with other departments, except on committee work and work of that character.

Mr. COLE. Could another reason be that the work that these three special assistants are now doing is such that there is not opportunity for them to do this other work?

Sedretary FORRESTAL. Well, they are overloaded with work. I am frank to say I never realized the tremendous amount of matters of common interest that focus about this office. Take the question of military pay, take the question of the hospitals, take the question of doctors and dentists, take the question of a common code of military justice—all of those involve long, detailed studies, and they require the attention and the hard and assiduous effort of men. You cannot

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combine that type of work with the broad administrative work this gentleman would have to carry.

Mr. VINSON. Mr. Chairman, may I ask a question?

Mr. SHORT. Yes.

Mr. VINSON. Along the lines of the first question by Mr. Cole with reference to section 203, while he might have the authority to establish some kind of military staff in the Under Secretary's office, you do not construe that the intent of Congress would be that he would have the authority to do so and it would not be done?

Secretary FORRESTAL. Well, I have been scrupulous, Mr. Chairman, in trying not to go against the will of Congress on the question of a military staff. I have come to the conclusion that whether you call it a staff or not—I think the words "military staff" have been somewhat misleading—you must have access in a continuous form to military judgment.

Mr. VINSON. Well, of course, section 203 does not deny you, but on the contrary permits it, but at the same time it makes a differential. It says "shall not establish a military staff." Now, you would not consider that the Office of Under Secretary would have the authority to establish a military staff?

Secretary FORRESTAL. I consider that any prohibition that applies to me applies to him.

Mr. VINSON. All right.

Mr. RIVERS. Let us report the bill. We know what is in it.

Mr. SHORT. Wait just a minute.

Mr. ELSTON. I would like to offer an amendment before the bill is reported.

Mr. RIVERS. Excuse me.

Mr. SHORT. Are there any questions of you gentlemen back here? (No response.)

Mr. SHORT. Mr. Elston.

Mr. ELSTON. Mr. Chairman, I would like to offer the following amendment, on page 1, line 9: To insert a colon in lieu of a period, and add this proviso:

Provided, That a person who has within 10 years been on active duty as a commissioned officer in a Regular component of the armed services shall not be eligible for appointment as Under Secretary of Defense.

Now, that is exactly the same provision that is written into the National Security Act insofar as the Secretary of Defense himself is concerned.

Mr. SHORT. I think that should be in. It is very acceptable to me.

Mr. RIVERS. Did you say that is the same wording?

Mr. ELSTON. Exactly the same language.

Mr. SHORT. It conforms to existing law. Without objection, we will accept the amendment.

Mr. RIVERS. I move a favorable report.

Mr. PHILBIN. I have moved the bill be favorably reported.

Mr. SHORT. As amended?

Mr. PHILBIN. As amended.

Mr. RIVERS. And I second the motion.

Mr. SHORT. Mr. Clerk, call the roll.

(Roll call.)

Mr. HARPER. Nineteen "ayes," Mr. Chairman.

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Mr. VINSON. Mr. Chairman, I move that the gentleman from Missouri, Mr. Short, be instructed to report the bill and file the report, and to make application before the Rules Committee for a rule, and take charge of the bill on the floor of the House.

Mr. PHILBIN. Second the motion.

Mr. SHORT. It has been moved and seconded. All in favor, "aye." Opposed, "no."

It is so ordered.

I think we could get this measure through by unanimous consent.

Mr. VINSON. That is right.

Mr. RIVERS. Let us try it.

Mr. SHORT. I think we should try it. There is no use of getting a rule and then have the possibility of debate on this thing. We will try to get it through by unanimous consent, and then if there is any objection we can get a rule.

Mr. VINSON. Yes.

Mr. SHORT. I merely wish to repeat, Mr. Secretary, that most members of the committee are aware, like our very distinguished Chairman Vinson, of the fact that you have been working 18 hours a day, including Sundays, every since you came to Washington, and I am glad this long-overdue legislation will soon become law.

Mr. VINSON. Mr. Chairman, the bill fixes the pay?

Mr. SHORT. Yes; in the last paragraph——

Mr. VINSON. Let us agree on his pay, Mr. Chairman.

Mr. SMART. The point being here that Under Secretaries of the Army, Navy, and Air draw $10,000, whereas the Under Secretary of State now draws $12,000. It is contemplated in this bill that the Under Secretary of Defense will draw $12,000, the same pay as Under Secretaries in the executive departments, such as the Under Secretary of State, rather than the same pay as Under Secretaries of the Army, Navy, and Air. It should be clarified.

Mr. VINSON. I suggest, Mr. Chairman, that we put in the bill that he draws $15,000.

Mr. SMART. May I suggest there, Mr. Vinson, that there is pending before the Congress an over-all pay bill affecting such officials.

Mr. VINSON. Twelve thousand, then.

Mr. SMART. Well, this other bill may authorize up to $20,000, but no one knows what the final bill will provide. And it is contemplated by this section that this official, the Under Secretary of Defense, would draw the same pay as is finally approved by the Congress for Under Secretaries of executive departments.

I just wanted to be sure that the committee understood what this section on compensation means.

Mr. COLE. Does Mr. Secretary Forrestal have any comment to make on the point?

Secretary FORRESTAL. Well, I would like to see him, in line with Mr. Vinson's suggestion, draw the $15,000.

I frankly had assumed that the proposals for increasing the pay of executive department officials would cover this situation, but I realize that inasmuch as that is not enacted as yet you probably want to identify the pay that he would get.

Mr. VINSON. Mr. Chairman, I think we are clearly within our rights if we fix the pay ourselves. I think $15,000 is about as small a pay as you could afford to pay.

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And I might say that I think we are a little derelict in not increasing the pay of the three assistants. You cannot get good Government men for the existing pay, because of the sacrifices that they have to make. This is one of the most responsible positions in the Government. Certainly $15,000 salary is by no means out of line. I think the committee will be clearly justified in putting $15,000 in the bill.

Mr. KILDAY. Mr. Chairman, of course, he ought to be at the same rate as other Secretaries to Cabinet Members.

Mr. SHORT. Because if you do discriminate and there is a different scale, you are going to run into objection on the floor. Someone will object to it.

Mr. KILDAY. And suppose they come out with $20,000, and we have this fixed at $15,000.

Mr. SHORT. Well, I think it is clear enough. We will just leave it as it is.

Now, Mr. Brooks, do you have any report to make from your subcommittee——

Mr. HÉBERT. Mr. Chairman.

Mr. SHORT. Mr. Hébert.

Mr. HÉBERT. Excuse me, Mr. Brooks.

Mr. Chairman, before you leave this bill I understand there was a roll call on it, and I ask permission to be recorded in favor of it.

Mr. SHORT. Without objection, it is so ordered. Record Mr. Hébert.

Mr. Secretary, you are a very busy man. If you care to leave, you may.

Secretary FORRESTAL. I appreciate your courtesy. I wish to thank you and the chairman and members for your very kind consideration.

Mr. SHORT. Thank you.

Mr. ANDERSON. Mr. Chairman.

Mr. SHORT. Yes.

Mr. ANDERSON. I was unavoidably detained. I would like to be registered as voting "aye" on the bill creating the Office of Under Secretary of National defense.

Mr. SHORT. Without objection, record the vote of Mr. Anderson as "aye."

Mr. WINSTEAD. Mr. Chairman, may I be recorded as voting "aye" on the first bill?

Mr. SHORT. Yes.

Without objection, Mr. Winstead will be recorded as voting in favor of H. R. 2216.

Mr. BLACKNEY. Mr. Chairman.

Mr. SHORT. The gentleman from Michigan.

Mr. BLACKNEY. I ask unanimous consent that I may be recorded as voting favorably on H. R. 2216.

Mr. SHORT. Without objection, the gentleman will be so recorded.

Mr. ARENDS. And me.

Mr. SHORT. Mr. Arends, also.

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[No. 23]

FULL COMMITTEE HEARINGS ON S. 632, TO AUTHORIZE CERTAIN PERSONNEL AND FORMER PERSONNEL OF THE NAVAL ESTABLISHMENT TO ACCEPT CERTAIN GIFTS AND A FOREIGN DECORATION TENDERED BY FOREIGN GOVERNMENTS; S. 279, TO AUTHORIZE THE ADVANCE ON THE RETIRED LIST OF LT. JOHN T. McDERMOTT, UNITED STATES NAVY (RETIRED), TO THE GRADE OF LIEUTENANT COMMANDER; S. 630, TO AMEND SECTION 19 OF THE ACT OF AUGUST 13, 1946 (60 STAT. 1057), SO AS TO REMOVE THE UPPER AGE LIMIT FOR APPOINTMENT TO COMMISSIONED GRADE IN THE SUPPLY CORPS OF THE NAVY; S. 673, RELATING TO THE PAY AND ALLOWANCES OF OFFICERS OF THE NAVAL RESERVE PERFORMING ACTIVE DUTY IN THE GRADE OF REAR ADMIRAL, AND FOR OTHER PURPOSES; H. R. 2485, TO AUTHORIZE THE ATTENDANCE OF THE UNITED STATES MARINE BAND AT THE EIGHTY-THIRD AND FINAL NATIONAL ENCAMPMENT OF THE G. A. R. TO BE HELD IN INDIANAPOLIS, IND., AUGUST 28 TO SEPTEMBER 1, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Wednesday, February 16, 1949.

The committee met at 10:45 a. m., Hon. Dewey Short presiding.

Mr. SHORT. Now, Mr. Brooks.

Mr. BROOKS. Pass me by.

Mr. SHORT. Mr. Durham.

Mr. DURHAM. Subcommittee No. 3 is ready to report S. 632.

(S. 632 and the accompanying report on its companion bill, H. R. 2476, are as follows:)

[S. 632, 81st Cong., 1st sess.]

AN ACT To authorize certain personnel and former personnel of the Naval Establishment to accept certain gifts and a foreign decoration tendered by foreign governments

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following-named members and former members of the naval service are hereby authorized to accept such gifts as have been tendered them by foreign governments as of the date of approval of this Act: Rear Admiral Harold M. Martin, United States Navy; Captain William R. Brust, United States Naval Reserve; Captain Bennett W. Wright, United States Navy; Captain George C. Wright, United States Navy; Captain Richard W. Ruble, United States Navy; Commander Robert F. Carmody, United States Navy, Commander James I. Cone, United States Navy; Commander Jack Dean, United States Navy; Commander Gordon Fowler, United States Navy; Commander Richard L. Fowler, United States Navy; Commander John E. Hausman, United States Navy; Commander Draper L. Kauffman, United States Navy; Commander James A. Knowlton, United States Naval Reserve; Commander John P. Lunger, United States Navy; Commander Robert M. Milner, United States Navy; Commander Frank G. Raysbrook, United States Navy; Com-

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mander Frederick M. Stiesberg, United States Navy; Commander William A. Stuart, United States Navy; Commander Richard S. Rogers, United States Navy; Commander George R. Lee, United States Navy; Lieutenant Commander Raymond A. Boyd, United States Navy; Lieutenant Commander Laurence B. Green, United States Navy; Lieutenant Commander Melvin C. Hoffman, United States Navy; Lieutenant Commander Victor A. Moitoret, United States Navy; Lieutenant Commander John C. O'Connor, United States Navy; Lieutenant Commander Henry Nelson, United States Naval Reserve; Lieutenant Commander Norman L. Paxton, United States Navy; Lieutenant Commander Byron G. Shepple, United States Navy; Captain James J. Bott, United States Marine Corps; Lieutenant Irwin J. Vanderswag, United States Marine Corps; Lieutenant George H. Belk, United States Navy; Lieutenant Samuel Hopkins, Junior, United States Navy; Lieutenant Jack Scott, United States Navy; Lieutenant (junior grade) La Verne W. Brown, Junior, United States Navy; Lieutenant (junior grade) Leonard B. Di Napoli, United States Navy; Lieutenant (junior grade) Thomas L. Neilson, United States Navy; Lieutenant (junior grade) Horace A. Thomsen, United States Navy; Ensign Robert P. Armstrong, United States Navy; Chief Boatswain Anthony S. Ciccone, United States Navy; Boatswain Earl L. Hause, United States Navy; Joseph G. Pardovich, chief boatswain's mate, United States Navy; Robert D. Clendenon, chief musician, United States Navy; Carl F. Heine, chief machinist's mate, United States Navy; Gilbert H. Dobler, chief photographer's mate, United States Navy; Myrl A. Yeaman, chief photographer's mate, United States Navy; Crisanto Dolor, chief cook, United States Navy; Master Sergeant Lionel E. Simmons, United States Marine Corps; Willie F. Maguire, chief signalman, United States Navy; Donald K. Lobdell, chief radioman, United States Navy; Gorman "T" Perry, motor machinist's mate, first class, United States Navy; Jack O. Montgomery, boatswain's mate, second class, United States Navy; Charles R. Dickinson, boatswain's mate, third class, United States Navy; Lawrence H. Wasser, musician, third class, United States Navy; Gordon C. Wyman, fire controlman, third class, United States Navy; Robert Charles Vail, shipfitter, third class, United States Navy; Delmere B. Blackburn, private, first class, United States Marine Corps; Paul Hermann, seaman, first class, United States Navy; James E. McCall, seaman, first class, United States Navy; Charles H. Kilpatrick, seaman, first class, United States Navy; Clifford E. Kintner, seaman, first class, United States Navy; Bernard I. Landua, seaman, first class, United States Navy; Harold A. Masters, seaman, first class, United States Navy; Kenneth Karl Hrabal, seaman, first class, United States Navy; Nicholas Vignovich, seaman, first class, United States Naval Reserve; Leonard Stanley Tur, fireman, first class, United States Naval Reserve; L. R. Weedle, fireman, first class, United States Navy; R. N. Young, fireman, first class, United States Navy; and Michael Strusinski, coxswain, United States Naval Reserve.

SEC. 2. The following-named members of the naval service are hereby authorized to accept such awards as have been tendered them by foreign governments as of the date of the approval of the Act: Rear Admiral Edward W. Hansen, United States Navy; Captain Albert E. Fitzwilliam, United States Navy; and Lieutenant (junior grade) John E. Nichols, United States Navy.

SEC. 3. Doctor Mina S. Rees, a civilian employee of the Navy Department, is hereby authorized to accept and wear the King's Medal for Service in the Cause of Freedom which has been tendered her by the Government of Great Britain.

Passed the Senate February 8, 1949.

Attest:

LESLIE L. BIFFLE, *Secretary.*

[No. 11]

AUTHORIZING CERTAIN PERSONNEL AND FORMER PERSONNEL OF THE NAVAL ESTABLISMENT TO ACCEPT CERTAIN GIFTS AND A FOREIGN DECORATION TENDERED BY FOREIGN GOVERNMENTS (H. R. 2476). MR. VINSON

[THE SECRETARY OF THE NAVY,
Washington, January 14, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to authorize certain personnel and former personnel of the Naval Establishment to accept certain gifts and a foreign decoration tendered by foreign governments.

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The purpose of the proposed legislation is explained in its title.

The acceptance of gifts from foreign states by persons holding an office of trust profit under the United States is controlled by article I, section 9, clause 8, the Federal Constitution, which reads as follows:

"No Title of Nobility shall be granted by the United States: And no Person olding any Office of Profit or Trust under them, shall, without the Consent of e Congress, accept of any Present, Emolument, Office, or Title, of any kind atever, from any King, Prince, or foreign State."

The Navy Department has interpreted this clause to mean that enlisted men e officers within the purview of this provision and that personnel having any nection with the Navy, including active, inactive, or retired individuals, are so in this category.

At the present time certain gifts and a decoration from foreign nations to rsonnel of the Naval Establishment are being withheld pending appropriate gislation.

The gifts include a barometer, gold watches, pieces of plate, and cigarette cases varded naval personnel at various times since 1935. While the reason for giving ree of these presents is unknown, the others are tokens of appreciation, such as ose items the Danish Government presented to two Naval officers for training anish personnel at the naval air station, Jacksonville, Fla. The Icelandic overnment gave 10 awards for aid to the Icelandic motor vessel *Laxfoss*, January). 1944, when a Navy invasion boat rescued the passengers and crew of that ssel when she was stranded by night off Reykjavik during a severe snowstorm.

Prince Saud of the Saudi Arabian Government has presented gifts to various ficers and enlisted men of a naval task force recently in Mediterranean waters. hese gifts are in keeping with the precedent created by similar gifts to the navies other countries.

The foreign decoration, the acceptance of which would be authorized by the roposed legislation, is the King's Medal for Service in the Cause of Freedom warded by the British Government to Dr. Mina S. Rees, now head of the Mathematics Branch of the Office of Naval Research, Navy Department, for her contributions in the field of mathematical research during World War II.

The gifts and the decoration are at present in the custody of the State Department pending congressional approval for their acceptance.

The proposed legislation would further authorize the award of the Cross of aval Merit by Peru and two awards of the Order of Naval Merit and Diploma y Brazil.

The enactment of this proposed legislation would result in no cost to the overnment.

The Navy Department has been designated by the Office of the Secretary of efense to sponsor this proposal on behalf of the National Military Establishment nd accordingly recommends its enactment.

An identical report has been transmitted to the Speaker of the House of epresentatives this date.

The Navy Department has been advised by the Bureau of the Budget that here is no objection to the submission of this proposed legislation.

Sincerely yours,

JOHN L. SULLIVAN.

Mr. DURHAM. The proposed bill authorizes certain naval personnel nd former naval personnel to accept various gifts and a foreign lecoration heretofore tendered them by foreign governments.

Public Law 314 of the Eightieth Congress amends section 1 of the ct of July 20, 1942, so as to permit a member or former member f the armed forces to accept and wear—

uch decorations, orders, medals, and emblems as may be tendered them, and hich are conferred by such governments upon members of their own military orces.

The Department of the Navy does not interpret this law as permitting the acceptance of certain gifts and awards which have been tendered to naval personnel by various foreign governments during the past 15 years. Accordingly, these gifts and awards are now in the custody of the State Department and require congressional approval for their acceptance.

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Section 1 of this bill, S. 632, names the 38 officers and 30 enlisted men of the Navy or Marine Corps who are involved in the legislation and authorizes their acceptance of the gifts they have been tendered.

Section 2 of the bill authorizes three Navy officers to accept such awards as they have been tendered by foreign governments as of the date of the approval of this act.

Section 3 authorizes a Navy Department civilian employee to accept a medal tendered her by Great Britain. This happens to be a woman.

The bill has the recommendation of the Navy Department, the approval of the Secretary of Defense, and the Bureau of the Budget interposes no objection.

The committee report on this bill is unanimous, and the subcommittee asks that it be reported to the full house.

Mr. VINSON. It is a Senate bill, is it not?

Mr. SHORT. S. 632.

Mr. VINSON. I move the bill be favorably reported and that the gentleman from North Carolina report the bill, Mr. Durham.

Mr. BROOKS. May I ask a question with reference to this?

Mr. Chairman, are there any men who have been tendered medals that are not included in this?

Mr. DURHAM. That will require special legislation by the committee on each item.

Mr. PHILBIN. Mr. Chairman, what is the nature of the gifts referred to?

Mr. DURHAM. There is a long list of those, if you care to read it. They are watches, cigarette cases, and similar things.

Mr. PHILBIN. Given by the governments or by private individuals?

Mr. DURHAM. By various governments.

Now, the State Department, of course, accepts those and can accept them, and it makes it rather hard on the service personnel not to be able to accept them. It is rather embarrassing to the foreign governments. They are just held in escrow at the State Department until action by the Congress is taken.

Mr. SHORT. It has been moved and seconded that the bill be reported favorably.

All in favor say "aye." Opposed, "no."

It is so ordered. Mr. Durham will report the bill.

What else, Mr. Durham?

Mr. DURHAM. The committee also reports S. 279 and recommends approval of this bill.

(S. 279 and the report accompanying the companion bill, H. R. 1793, are as follows:)

[S. 279, 81st Cong., 1st sess.]

AN ACT To authorize the advance on the retired list of Lieutenant John T. McDermott, United States Navy (retired), to the grade of lieutenant commander

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, Lieutenant John T. McDermott, United States Navy (retired), shall be advanced to the grade of lieutenant commander on the retired list effective for all purposes from the date of his retirement.

Passed the Senate February 8, 1949.

Attest: LESLIE L. BIFFLE, *Secretary*.

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[No. 7]

TO AUTHORIZE THE ADVANCE ON THE RETIRED LIST OF LT. JOHN T. MCDERMOTT, UNITED STATES NAVY (RETIRED), TO THE GRADE OF LIEUTENANT COMMANDER (H. R. 1793). MR. COLE OF NEW YORK

THE SECRETARY OF THE NAVY,
Washington, January 3, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to authorize the advance on the retired list of Lt. John T. McDermott, United States Navy (retired), to the grade of lieutenant commander.

Lieutenant McDermott entered the Naval Academy as a midshipman on May 31, 1916, and was commissioned as an ensign on June 7, 1919. He served on the active list of the Navy successively in the grades of ensign, lieutenant (junior grade), and lieutenant until June 30, 1941, on which date he was transferred to the retired list pursuant to section 12 (k) of the act of June 23, 1938 (52 Stat. 950), as amended by the act of October 14, 1940 (54 Stat. 1174, 1175), by reason of having twice failed of selection as lieutenant commander. On that same date he was advanced to the grade of lieutenant commander with retired pay of that grade in accordance with the second proviso of the said section 13 (j), as interpreted by the Navy Department, which provides:

"That lieutenants who served in the Navy or Naval Reserve Force prior to November 12, 1918, and who shall have completed not less than twenty-one years of service, and who subsequent to June 23, 1938, have been or shall hereafter be retired under any provision of law, shall be advanced to the grade of lieutenant commander on the retired list, effective from date of retirement with the retired pay of that grade."

The Assistant Comptroller General, however, has held (B–61756, dated January 8, 1947) that a lieutenant of the Navy whose only service prior to November 12, 1918, was that of a midshipman at the Naval Academy may not be regarded as having served in the Navy or Naval Reserve Force prior to November 12, 1918, within the meaning of the said section 12 (k). Although the said section 12 (k) was specifically repealed by section 436 (g) of the act of August 7, 1947 (Public Law 381, 80th Cong.), such repeal is not pertinent in view of said Assistant Comptroller General's decision that section 12 (k) does not apply to Lieutenant McDermott.

As a result of the Assistant Comptroller General's decision that Lieutenant McDermott's advancement to the grade of lieutenant commander was erroneous and that his status on the retired list is that of a lieutenant, this officer now finds himself indebted to the Government in the amount of approximately $2,300. The Navy Department considers that checkage of the retired pay of this officer to satisfy such an indebtedness would be unjust.

The purpose of the proposed legislation is to legalize the action of the Navy Department in advancing Lieutenant McDermott to the grade of lieutenant commander and remove the necessity for checkage of his retired pay.

The Navy Department, accordingly, recommends enactment of the proposed legislation.

It is estimated that enactment of the proposed legislation will result in a cost of approximately $2,300 to the Government.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

Enclosure.

A BILL To authorize the advance on the retired list of Lieutenant John T. McDermott, United States Navy (retired), to the grade of lieutenant commander

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, Lieutenant John T. McDermott, United States Navy (retired), shall be advanced to the grade of lieutenant commander on the retired list effective for all purposes from the date of his retirement.

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Mr. DURHAM. This is in regard to Lieutenant John T. McDermott, USN, retired in 1941 after some 22 years of service, exclusive of Naval Academy time. He was retired, however, as a lieutenant commander pursuant to the act of June 23, 1938, which provided that lieutenants who served in the Navy or Naval Reserve prior to November 12, 1918, and had completed 21 years of service were to be retired with the rank and pay of a lieutenant commander.

On January 8, 1947, however, the Office of Comptroller General ruled that Lieutenant McDermott's Naval Academy service did not count as service in the Navy or Naval Reserve, therefore he had improperly retired as a lieutenant commander.

The officer is now under the requirement of refunding approximately $2,300 which has been paid to him, and he has been reduced to the grade of lieutenant on the retired list.

The Navy Department considers it unjust to require this officer to refund the $2,300 and seeks in the proposed legislation to validate the payment and confirm his retirement in the grade of lieutenant commander.

The bill has the approval of the Bureau of the Budget, and the subcommittee is unanimous in its report and asks for a favorable report by the full committee to the House.

Mr. VINSON. Mr. Chairman, I move that the bill be favorably reported.

Mr. VAN ZANDT. Mr. Chairman, may I ask a question of the Navy Department?

Mr. SHORT. Yes.

Mr. VAN ZANDT. It is my understanding that they are giving this officer credit for the time at the Naval Academy; is that correct?

Captain McDILL. Yes, sir.

Mr. VAN ZANDT. Will this in any way establish a precedent?

Captain McDILL. It will not in this case. This case will not establish a precedent or general counting of service.

Mr. VAN ZANDT. It will not.

Captain McDILL. This bill is for the purpose of relieving a checkage against this officer by reason of a misunderstanding as to the meaning of "naval service prior to November 12, 1918."

Mr. VAN ZANDT. As I understand it, the man has already received the $2,300?

Captain McDILL. He has, sir.

Mr. VAN ZANDT. And the Navy Department is simply asking Congress for approval of that payment that has already been made?

Captain McDILL. That is true, sir.

Mr. DURHAM. The Senate has passed S. 279, and the subcommittee's report is unanimous.

Mr. SHORT. Without objection, the bill is reported. Mr. Durham will report S. 279.

Mr. Durham.

Mr. DURHAM. Subcommittee No. 3 has reported unanimously S. 630 and recommends a favorable report.

(S. 630 and the report on the companion bill, H. R. 1748, are as follows:)

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[S. Rept. No. 630, 81st Cong., 1st sess.]

N ACT To amend section 19 of the Act of August 13, 1946 (60 Stat. 1057), so as to remove the upper age limit for appointment to commissioned grade in the Supply Corps of the Navy

Be it enacted by the Senate and House of Representatives of the United States of merica in Congress assembled, That section 19 of the Act of August 13, 1946 (60 tat. 1057), as amended, is hereby further amended to read as follows:

"SEC. 19. No person shall be appointed to a commissioned grade in the Supply 'orps of the Navy who will be less than twenty-one years of age on July 1 of the alendar year in which appointed and until his physical, mental, and moral quali- ications have been established to the satisfaction of the Secretary of the Navy."

Passed the Senate February 8, 1949.

Attest:

LESLIE L. BIFFLE, *Secretary.*

[No. 5]

TO AMEND SECTION 19 OF THE ACT OF AUGUST 13, 1946 (60 STAT. 1057), SO AS TO REMOVE THE UPPER AGE LIMIT FOR APPOINTMENT TO COMMISSIONED GRADE IN THE SUPPLY CORPS OF THE NAVY (H. R. 1748). MR. DURHAM

THE SECRETARY OF DEFENSE,
Washington, January 13, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Navy recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To amend section 19 of the act of August 13, 1946 (60 Stat. 1057), so as to remove the upper age limit for appointment to commissioned grade in the Supply Corps of the Navy."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the establishment has been placed in the Department of the Navy.

Sincerely yours,

JAMES FORRESTAL.

Attachments (2).

THE SECRETARY OF THE NAVY,
Washington, January 3, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

MY DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to amend section19 of the act of August 13, 1946 (60 Stat. 1057), so as to remove the upper age limit for appointment to commissioned grade in the Supply Corps of the Navy.

The purpose of the proposed legislation is to remove the present 25-year upper age limit for appointment to commissioned grade in the Supply Corps of the Navy.

Under present circumstances the existing maximum age limit has become unduly restrictive. Many of the recent college graduates and those who will graduate within the next several years are veterans. Their ages are well above the prewar average and in many cases they are, therefore, ineligible for appointment in the Supply Corps under existing law. The 25-year age restriction also prevents the appointment of some Naval Academy graduates who, upon graduation, may not be physically qualified as line officers.

A further reason for amending the present section 19 arises out of its inconsistency with other statutory provisions. While the act of August 13, 1946, pertains to the procurement of officers from civilian sources, and section 19 would be construed as a restriction on that source only, section 6 of the act of July 22, 1935 (49 Stat. 487), and section 404 of the act of August 7, 1947 (61 Stat. 795), which pertain to appointments from personnel already in the Navy, contain no similar limitation. The 1935 act, authorizing transfers of line officers to the various staff corps, expressly provides that such transfers may be made regardless of age. The 1947 act, in its provisions for limited-duty officers to be appointed from warrant and enlisted grades, requires a minimum of 10 years' service in the Navy but sets no limitation as to age. While these two acts do not conflict with section 19 of the act of August 13, 1946, the latter is inconsistent with them for it results in

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different age requirements for appointment to commissioned grade in the Supply Corps depending upon the source of the appointment.

The Navy Department has been designated by the Office of the Secretary of Defense to sponsor this proposal on behalf of the National Military Establishment and accordingly recommends its enactment.

This report has been coordinated within the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

Mr. DURHAM. This proposed bill will remove the present maximum age limit of assistant paymasters of 25 for appointment to commissioned grade in the Supply Corps of the Navy. This limit applies to appointment of assistant paymasters only and has had the result of barring the Navy from considering for appointment many veterans who are graduating from college above the age of 25. The limit has also not permitted in some instances the appointment of Naval Academy graduates as assistant paymasters when such graduates have not been physically qualified for line-officer appointment.

The enactment of the proposed legislation will not result in any increased costs to the Government. Its passage is recommended by the Navy Department and the National Military Establishment, and the Bureau of the Budget interposes no objection.

I move a favorable report on the bill.

Mr. SHORT. All in favor say "Aye." Opposed, "No."

The bill is reported favorably.

Mr. DURHAM. Subcommittee No. 3 reports Senate Bill 673 (S. 673 and the report on the companion bill, H. R. 2426, are as follows:)

[S. 673, 81st Cong., 1st sess.]

AN ACT Relating to the pay and allowances of officers of the Naval Reserve performing active duty in the grade of rear admiral, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any officer of the Naval Reserve serving in the grade of rear admiral shall receive the pay and allowances prescribed by law for real admirals of the upper half when any officer of the active list of the line of the Regular Navy, junior to him, is in the upper half of the list of rear admirals: *Provided*, That the provisions of this Act shall not apply to officers of the Naval Reserve while on any lineal list established pursuant to title III of the Officer Personnel Act of 1947: *Provided further*, That no back pay or allowances shall be held to have accrued under the provisions of this Act for any period prior to the date of its approval.

Passed the Senate February 8, 1949.

Attest:

LESLIE L. BIFFLE, *Secretary.*

[No. 9]

RELATING TO THE PAY AND ALLOWANCES OF OFFICERS OF THE NAVAL RESERVE PERFORMING ACTIVE DUTY IN THE GRADE OF REAR ADMIRAL (H. R. 2426). MR. VINSON

THE SECRETARY OF THE NAVY,
Washington, January 19, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill relating to the pay and allowances of officers of the Naval Reserve performing active duty in the grade of rear admiral, and for other purposes.

The purpose of the proposed legislation is to remove an inadvertent discrimination now existing between rear admirals of the Naval Reserve and rear admirals of the Regular Navy in the matter of upper-half pay and allowances.

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Under section 7 of the Naval Personnel Act of March 3, 1899 (30 Stat. 1005), rear admirals on the active list of the line of the Navy were divided for pay purposes into the upper half and the lower half; those officers embraced in the lower half of the grade numerically were given the pay and allowances authorized for brigadier generals of the Army; and those of the upper half, the pay and allowances of a major general of the Army. That division of rear admirals on the active list was continued in effect by subsequent acts including section 7 of the Pay Readjustment Act of 1942, as amended (37 U. S. C. 107), which section uses in part the following language:

"SEC. 7. The annual base pay of a brigadier general * * * or * * * *rear admiral (lower half)* of the Navy * * * shall be $6,600; and the annual base pay of a major general * * * or * * * *rear admiral (upper half)* of the Navy * * * shall be $8,800 * * *." [Italics supplied.]

Section 14 of the Pay Readjustment Act of 1942, as amended, provides in part as follows:

"SEC. 14. Officers, warrant officers, and enlisted men of the Reserve forces of any of the services mentioned in the title of this Act, when on active duty in the service of the United States, shall be entitled to receive the same pay and allowances as are authorized for persons of corresponding grade and length of service in the Regular Army, Navy, Marine Corps, Coast Guard, or Public Health Service."

Section 2 of the act of June 30, 1942 (56 Stat. 464, 50 U. S. C. 807), dealt with the advancement of rear admirals to the upper half of that grade and provided in part as follows:

"SEC. 2. The number of rear admirals on the active list of the line entitled to the pay and allowances provided by law for rear admirals of the upper half, exclusive of those carried as additional numbers in such grade, shall be one-half of the number of permanent and temporary officers of the line in that grade * * *."

At the request of the Navy Department, the Comptroller General of the United States considered the question of upper-half pay for rear admirals of the Naval Reserve. His decision of September 10, 1946 (B-57583), held that section 2 of the above-mentioned act of June 30, 1942, referred to rear admirals on the active list of the line of the Navy and that the term "active list," with reference to the Navy, generally was used to denote officers of the Regular Navy as distinguished from officers of the Naval Reserve and officers on the retired list. It was further held, that while an officer of the Naval Reserve appointed to the grade or rank of rear admiral is entitled, when on active duty, to the same pay and allowances authorized for officers of corresponding grade and length of service in the Regular Navy (pursuant to sec. 14 of the Pay Readjustment Act of 1942), the matter of determining whether such officer is entitled to receive the pay of the upper half is dependent, not upon his length of service, but rather upon his numerical standing on the list of rear admirals of the line on the active list. The Comptroller determined that Reserve officers promoted to the grade of rear admiral do not thereby become entitled to have their names placed on the list of rear admirals of the line on the active list; hence, such officers are not entitled to receive the pay and allowances of the upper half as such pay is specifically authorized only for officers on the active list of the line of the Navy. The Comptroller General concluded that in the absence of a statute specifically so providing, his office—

"would not be justified in viewing the provision in section 14 of the Pay Readjustment Act of 1942, supra, as authorizing credit of active upper half pay to officers promoted * * * to the rank of rear admiral in the Naval Reserve."

The proposed bill is designed to remove the unjust discrimination against Reserve rear admirals whose names are not on either of the lineal lists established under title III of the Officer Personnel Act of 1947. Reserve rear admirals whose names are placed on a lineal list will be entitled to receive upper-half pay, when appropriate, pursuant to the provisions of the Officer Personnel Act (secs. 311 (d) (14) and 315). The proposed legislation is not retroactive.

The Navy Department has been designated by the Office of the Secretary of Defense to sponsor this measure on behalf of the National Military Establishment, and accordingly recommends its enactment.

This report has been coordinated within the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

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Mr. DURHAM. This proposed bill is prompted by the fact that although existing law permits Naval Reserve officers to retain the grade of rear admiral, the Comptroller General has ruled that such officers may not receive pay of the upper half under any condition, for the reason that no statutory provision affirmatively provides for it. A Regular Navy rear admiral of the upper half receives the pay of an Army major general while one of the lower half receives the pay of a brigadier general.

The proposed bill applies only to Reserve rear admirals on active duty in connection with the organization and administration of the Reserve program. Since there is now one rear admiral on active duty in that status with the precedence of Regular Navy rear admirals entitled to upper-half pay, this bill will authorize the officer concerned, as well as any others who in the future may be assigned to similar active duty, to receive pay equal to that of other rear admirals with whom they have precedence.

Mr. RIVERS. Mr. Chairman, if this has the approval of the Navy Department, since it is such an unusual thing—that they would go to such a great deal of trouble for the Reserve—I think we ought to pass it unanimously.

Mr. DURHAM. The committee amendment to the proposed bill—on line 4, page 1, after the word "shall" add a comma and insert "when otherwise entitled to active-duty pay and allowances"—will insure that such pay and allowances may be received by a Reserve rear admiral only when otherwise entitled to active-duty pay and allowances.

This bill just simply places the Reserve rear admiral on the same pay basis as a Regular rear admiral.

The subcommittee recommends its passage, as amended.

Mr. VAN ZANDT. I may say, for the benefit of the gentleman from Georgia, who is here, that the Navy Department has looked after the Reserves in grand style.

Mr. SHORT. Do I hear a motion?

Mr. VINSON. I move the bill as amended be favorably reported.

Mr. SHORT. Any seconds?

Mr. RIVERS. I second the motion.

Mr. SHORT. All in favor say "aye." Opposed, "no."

The bill as amended is favorably reported.

Mr. DURHAM. Mr. Chairman, Subcommittee No. 3 has finished a hearing and reports H. R. 2546, the so-called radar screen measure——

Mr. SHORT. This is a very important bill.

Mr. DURHAM. And recommends a favorable report and adoption by the committee.

(H. R. 2546 is as follows:)

[H. R. 2546, 81st Cong., 1st sess.]

A BILL To authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Air Force is hereby authorized to establish and develop within and without the continental limits of the United States in fulfilling the air defense responsibilities of the Department of the Air Force such land-based air warning and control installations and facilities, by the construction, installation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, utilities, and access roads, and to provide for necessary administration and planning therefor, without regard

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o sections 1136, 3648, 3734, Revised Statutes, as he may deem necessary in the nterest of national security.

SEC. 2. In furtherance of the above, the Secretary of the Air Force is authorized o make surveys and to acquire lands and rights pertaining thereto or other nterests therein, including the temporary use thereof, by donation, purchase, xchange of Government-owned lands, or otherwise, and to place permanent and emporary improvements thereon whether such lands are held in fee or under ease, or under other temporary tenure.

SEC. 3. There is hereby authorized to be appropriated, out of any moneys in he Treasury of the United States not otherwise appropriated, such sums as may e necessary to carry out the purposes of this Act, and when so specified in an ppropriation Act such amounts shall remain available until expended.

Mr. COLE. Mr. Chairman, may I inquire when the hearings became vailable?

Mr. DURHAM. I beg your pardon?

Mr. COLE. When were the hearings available?

Mr. DURHAM. Well——

Mr. VINSON. They have not come out yet, have they?

Mr. HARPER. No.

Mr. COLE. This is such an important bill that I would like to have he hearings.

Mr. VINSON. I suggest, Mr. Chairman, that we let this go over to ext Tuesday.

Mr. SHORT. What is the estimated cost?

Mr. DURHAM. $161,000,000.

Mr. SHORT. We better have hearings on that.

Mr. VINSON. We did.

Mr. SHORT. I mean get copies of the hearings.

Mr. VINSON. May I ask the clerk—the hearings were sent down when?

Mr. HARPER. On this particular bill, they were sent down last night. They will be back in a couple of days.

Mr. VINSON. On the radar bill?

Mr. SMART. That is right; yes, sir.

Mr. HARPER. The hearings were only concluded Saturday, and hey were sent down last night.

Mr. Vinson. Of course we can't take that bill up. We will take it p next Tuesday.

Mr. Rivers. In that connection, a lot of people may be out of own next Tuesday.

Mr. VINSON. Well, then——

Mr. DURHAM. Mr. Chairman, I might say there was a lot in these hearings that couldn't be taken down. There was no record made of it. There might be some things, of course, that the committee would desire to go into executive session on. It would have to, necessarily. We have a full explanation of the bill here, about as full as the hearing can give you.

Mr. SHORT. Is that right?

Mr. SMART. Yes, sir.

Mr. VINSON. Mr. Chairman, I suggest we follow the rules and just let this matter go over until next week sometime. We are going to have a full committee meeting next week. We can take that up after the hearings have all been printed.

Mr. SHORT. It is too important to dispose of quickly.

You are through, Mr. Durham?

Mr. DURHAM. I am through.

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Mr. SHORT. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, this H. R. 1741 is in a similar situation, in that hearings are not available.

However, Mr. Chairman, outside of prepared statements of five witnesses there are no hearings on it. The hearings were not recorded. They were all in executive session. They were all top military secrets.

Mr. SHORT. What is the bill?

Mr. BROOKS. I think I can explain the bill just about as well as you could understand it from the meager hearings. It has for a single purpose the establishment of a joint long-range proving ground for guided missiles.

Now, the services have three proving grounds for guided missiles. None of these three proving grounds, however, are capable of expansion to handle guided missiles with ranges over 100 miles.

Mr. SHORT. Where are they?

Mr. BROOKS. One is in New Mexico and one is southern California

Mr. SHORT. And Washington.

Mr. BROOKS. Yes. There are three of them in all. As I say, none of them are susceptible of expansion. The services feel the need of testing missiles up to 500 miles, and perhaps, after a period of years at 3,000 miles. Therefore, it is vital to them that they obtain a joint proving ground to be sponsored by all services but to be constructed initially by the Air Force. They come to us with this bill providing for a $200,000,000 authorization for that purpose.

The committee considered the bill very carefully. And especially they considered the question of how the money was going to be spent and—in detail—how much for housing, how much for installation and how much for equipment. And we got a break-down on it.

After carefully considering that, the committee decided to reduce the amount from $200,000,000, as authorized in section 3 of the bill to $75,000,000. That amount the services said would be ample for the initial construction of the proving ground.

Mr. ARENDS. Why did they ask for $200,000,000, then?

Mr. BROOKS. Because over a long period of time they will need $200,000,000.

Mr. RIVERS. At least.

Mr. BROOKS. But they are not prepared to give now the detail of their long-range plans. Guided missiles, as you know, are in an experimental condition. The experiments during the initial phase may show, for instance, that the plans that they now have in mind for future expansion are not in the right direction and therefore the future plans would be changed. They are not able to give us detailed information over a period of years.

The committee thought it wise to reduce the amount to $75,000,000 which will let them do their job. And that was acceptable to the services.

Mr. ARENDS. Is the $75,000,000 in the budget? I mean, will they get the funds out of the budget?

Mr. BROOKS. This bill is approved by the budget.

Mr. SHORT. It is just an authorization. They will have to come back each year for appropriations.

Mr. JOHNSON. Will the gentleman yield?

Mr. BROOKS. I yield.

Mr. JOHNSON. How did they break this down? How much for land and how much for construction, just in a general way?

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Mr. BROOKS. They gave us a general estimate on that. Housing, y figured would run about $20,000 a unit there. They think they need, on the base itself, about 800 or 900 enlisted personnel, and ether with the dependents they thought that would run around 00. In addition to that, they thought they would need in all about 00 personnel, as I recall.

Mr. JOHNSON. What I had in mind: Is half of it for land and half the other expenditures, or how is it divided up?

Mr. BROOKS. Not in percentages. We checked what they thought y would pay for the land, that is, frontage.

If the committee wants to go into executive session, we can give the actual break-down, but it is difficult to do so without going o confidential information which they are not ready to release at s time.

Mr. VINSON. Mr. Chairman, may I make this statement, or comnt. This bill is a very important bill, and so is the bill for the lar screen. But both bills involve such large sums of money that hink in fairness to all members of the committee it might be well us to follow the rule which specifies that we have to have the nted hearings for 3 days before we can vote.

I was under the impression that the hearings went on to the printer other day. It takes a good deal of time to get the printers to these back here. So I suggest that we put the consideration of se bills off until we do get the hearings, because a good deal of e testimony was in executive session, and we will probably want to into executive session to have them considered.

Mr. SHORT. Yes; I think so. I know I would like to sit in.

Mr. VINSON. So I suggest, Mr. Chairman, that Mr. Brooks wait til next week.

Now, has that one gone to the printer?

Mr. BROWN. No, sir.

Mr. VINSON. When is it going to the printer?

Mr. BROWN. Today.

Mr. VINSON. Everything?

Mr. BROWN. Yes, sir. It came back from the Air Force this rning.

Mr. VINSON. All right.

Mr. SHORT. Anything else, Mr. Brooks?

Mr. BROOKS. That is all, Mr. Chairman.

Mr. SHORT. I think it was our clear understanding—off the record re.

(Statement by Mr. Short outside the record.)

Mr. VAN ZANDT. Mr. Chairman, I ask by unanimous consent that e committee go on record as expressing its thanks and appreciation the Military Establishment in connection with its air demonstration sterday at Andrews Field.

Mr. SHORT. Yes; without objection an appropriate message of anks will be transmitted by the committee.

Mr. VINSON. Mr. Chairman, if Subcommittee No. 1 has not any re bills for the full committee, I propose to ask consideration of a l to permit the Marine Band to go to the last meeting of the Grand my of the Republic.

Mr. COLE. How do you know it is the last?

Mr. VINSON. Well, there are only six living.

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Mr. HARPER. They adopted a resolution.

Mr. WALSH. Mr. Chairman, is that the GAR bill?

Mr. HARPER. Yes.

Mr. WALSH. For the encampment at Indianapolis?

Mr. HARPER. Yes, sir.

Mr. WALSH. I ask favorable action on this bill, as that is a bill that I am very much interested in. That is the last meeting of the GAR——

Mr. SHORT. If you want it, we are for it. Without objection, we will report it favorably.

Mr. VINSON. Do you want to read the bill?

Mr. HARPER. Yes, sir. [Reading:]

[H. R. 2485, 81st Cong., 1st sess.]

A BILL To authorize the attendance of the United States Marine Band at the Eighty-third and Final National Encampment of the Grand Army of the Republic to be held in Indianapolis, Indiana, August 28 to September 1, 1949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to permit the band of the United States Marine Corps to attend and give concerts at the Eighty-third and Final National Encampment of the Grand Army of the Republic to be held in Indianapolis, Indiana, August 28 to September 1, 1949.

SEC. 2. For the purpose of defraying the expenses of such band in attending and giving concerts at such convention, there is hereby authorized to be appropriated a sufficient sum to cover the cost of transportation and pullman accommodations for the leaders and members of the Marine Band, and allowance not to exceed $8 per day each for additional traveling and living expenses while on duty, such allowance to be in addition to the pay and allowances to which they would be entitled while serving their permanent station.

Mr. VINSON. Mr. Chairman, I move the gentleman from Indiana be instructed to report the bill favorably to the House.

Mr. WALSH. Thank you.

Mr. SHORT. It has been moved and seconded that the bill be favorably reported by the gentleman from Indiana, Mr. Walsh.

Mr. BLACKNEY. Mr. Chairman.

Mr. SHORT. Wait just a minute.

All in favor say "aye." Opposed, "No."

Report it.

Mr. WALSH. Thank you, gentlemen.

Mr. VINSON. Mr. Chairman, I desire to make a statement.

I set down for Monday, the 21st, a full committee hearing at which time I will ask Mr. Kilday to preside and take charge, for the purpose of opening a hearing before the full committee on the pay bill. The pay bill has been referred to Subcommittee No. 2, but a portion of it I think should be heard by the full committee.

So I am asking the committee recess until Monday morning at 10 o'clock, at which time Mr. Forrestal and the representatives of the Hook Commission will make a general statement. And after the general statements before the full committee are finished, why, then, Mr. Kilday and his subcommittee will take charge of the pay bill and consider it.

And on March 2 Mr. Brooks will start a hearing on the military justice bill. The opening statement on that bill, and certain information which will be of interest to the full committee will be given, and Mr. Brooks will preside.

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Mr. Chairman, I move——

Mr. KILDAY. Mr. Chairman, before that, as to this meeting on onday, I hope that most of the committee can be here. This ook Commission is a civilian commission who worked for over a ar on this problem, at great expense to themselves, and they are ning here from different parts of the country for the purpose of ing us the over-all picture on pay adjustments. There will be ee of them here. The fourth one, Father Cavanaugh, the president Notre Dame, will not be able to be here at that time, but it is pro-sed that he come at a later date. I think we owe it to these men to here, and I think we need to know something about what is moti-ting the desire for pay adjustments. It is a very complicated bill d consists of 126 pages of printed matter. The hearings will obably run on for a number of weeks, to get the technical details. hink it is highly important that the committee be given the view-int of this commission, which is going to be here for that purpose ly.

Mr. ARENDS. I thought we settled that last year.

Mr. KILDAY. No; that was the promotion bill.

Mr. VINSON. I am going to ask, Mr. Chairman, that Mr. Kilday d Mr. Brooks try to finish their hearings and be able to report to e full committee on those two bills sometime at least by the 1st day April. That will give them the full month of March to fix up those o bills.

Mr. Chairman, if there is no other business——

Mr. DURHAM. Mr. Chairman.

Mr. SHORT. Mr. Durham.

Mr. DURHAM. In view of the question on the radar bill, I am going have mailed to each member an explanation of the bill in detail, d if you will read it I think you will get more information out of it an you will out of the hearing.

Mr. SHORT. Good.

We stand recessed until next Monday morning at 10 o'clock.

(Whereupon, at 11:15 a. m., the committee adjourned.)

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[No. 24]

UBCOMMITTEE HEARINGS ON S. 278 AND H. R. 1761, TO PREVENT RETROACTIVE CHECKAGE OF PAYMENTS ERRONEOUSLY MADE TO CERTAIN RETIRED OFFICERS OF THE NAVAL RESERVE, AND FOR OTHER PURPOSES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 2,
Thursday, February 24, 1949.

The subcommittee met at 10 a. m., Hon. Paul J. Kilday (chairman) esiding.

Mr. KILDAY. The committee will be in order.

We have a bill here (H. R. 1761) which I offered, and the same bill om the Senate (S. 278), providing for the prevention of retroactive eckage of payments erroneously made to certain retired officers of ie Naval Reserve, and for other purposes.

(S. 278 and H. R. 1761, with the accompanying report, are as llows:)

[S. 278, 81st Cong., 1st sess.]

N ACT To prevent retroactive checkage of payments erroneously made to certain retired officers of the Naval Reserve, and for other purposes.

E it enacted by the Senate and House of Representatives of the United States of merica in Congress assembled, That the term "Reserve components" as used in ction 6 of the Act approved February 21, 1946 (60 Stat. 27; 34 U. S. C. 410b), all include officers on the honorary retired list of the Naval Reserve or Marine orps Reserve established by section 309 of the Naval Reserve Act of 1938, as nended (34 U. S. C. 855h).

SEC. 2. This Act shall be effective from February 21, 1946.

Passed the Senate February 8, 1949.

Attest: LESLIE L. BIFFLE, *Secretary.*

[H. R. 1761, 81st Cong., 1st sess.]

BILL To prevent retroactive checkage of payments erroneously made to certain retired officers of the Naval Reserve, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of merica in Congress assembled, That the term "Reserve components" as used in ection 6 of the Act approved February 21, 1946 (60 Stat. 27; 34 U. S. C. 410b), hall include officers on the honorary retired list of the Naval Reserve or Marine orps Reserve established by section 309 of the Naval Reserve Act of 1938, as mended (34 U. S. C. 855h).

SEC. 2. This Act shall be effective from February 21, 1946.

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[No. 6]

TO PREVENT RETROACTIVE CHECKAGE OF PAYMENTS ERRONEOUSLY MADE TO CERTAIN RETIRED OFFICERS OF THE NAVAL RESERVE AND FOR OTHER PURPOSES (H. R. 1761). Mr. KILDAY

THE SECRETARY OF THE NAVY,
Washington, January 3, 1949.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

MY DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to prevent retroative checkage of payments erroneously made to certain retired officers of the Naval Reserve, and for other purposes.

The proposed legislation has a dual purpose. The primary purpose is to prevent checkage of payments made to certain officers of the Naval Reserve supposedly as retirement pay. The secondary purpose is to permit officers of the Naval Reserve, heretofore or hereafter placed on the honorary retired list, to avail themselves of the retirement benefits of sections 6 and 7 of the act approved February 21, 1946 (60 Stat. 27; 34 U. S. C. 410 (b) and 410 (c)), if they meet the service requirements specified therein.

The officers who would be affected by the primary purpose of the proposed bill were placed on or transferred to the honorary retired list of the Naval Reserve, without pay, prior to World War II under the provisions of the Naval Reserve Act of 1938, as amended (34 U. S. C. 855h). They subsequently served on active duty through the war, thereby acquiring sufficient active-duty credit to complete more than 20 years of active service. Accordingly, the retirement status of each was modified pursuant to section 6 of the act of February 21, 1946, and payments made as retirement pay pursuant to section 7 of said act. Said sections 6 and 7 read in part as follows:

"SEC. 6. When any officer of the Regular Navy or * * * the Reserve components thereof has completed more than twenty years of active service * * * at least ten years of which shall have been active commissioned service he may at any time thereafter * * * be placed upon the retired list on the first day of such month as the President may designate.

"SEC. 7. (a) Each officer retired pursuant to the foregoing sections * * * shall be placed on the retired list with the highest rank * * * held by him while on active duty * * *. Officers retired pursuant to the foregoing sections * * * shall receive retired pay at the rate of 2½ per centum of the active-duty pay with longevity credit of the rank with which retired, multiplied by the number of years of service for which entitled to credit in the computation of their pay while on active duty, not to exceed a total of 75 per centum of said active-duty pay * * *."

It was considered at the time, that although they had been previously placed on the honorary retired list, this fact would not be a legal obstacle to their "reretirement" with pay under the aforementioned act of February 21, 1946; hence, upon their own applications, they were placed on the retired list with pay.

In a decision dated May 6, 1947 (B–63359), the Comptroller General of the United States held that the action taken in the cases of these officers was not permitted by law; that they were not considered as being included within the provisions of section 6; and that they were not entitled to retirement, with pay, thereunder. These officers are, therefore, subject to checkage for all amounts they received supposedly as retirement pay.

The General Accounting Office has agreed to withhold checkage action pending initiation by the Navy Department of remedial legislation. The number of officers so involved is very small (three living and one deceased), but it is felt that since the reretirement of these officers was attempted in good faith and they accepted payments believed to be legal, such action should be validated. The total amount of checkage involved in the case of the above-mentioned four officers is $15,778.47. It is believed that the number of officers who will benefit from the secondary purpose of the proposed legislation will be very small.

The Navy Department recommends enactment of the proposed legislation.

An identical report has been transmitted to the Speaker of the House of Representatives this date.

The Departments of the Army and Air Force have no objection to the submission of this proposed legislation.

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The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

Mr. KILDAY. Are you going to appear on the bill, Commander Martineau?

Commander MARTINEAU. Yes, sir.

Mr. KILDAY. All right, Commander.

Commander MARTINEAU. Mr. Chairman, I have a very brief statement here which I would like to read, and then I am sure you will have questions following that. If I may proceed, I will read a brief statement.

Mr. KILDAY. Go right ahead, sir.

Commander MARTINEAU. The purpose of this bill is to give officers of the Naval Reserve who have been placed on the honorary retired list the benefits of sections 6 and 7 of Public Law 305, approved February 21, 1946, if they meet the service requirements specified therein. These requirements are that the officer shall have performed at least 20 years' active service in the Navy, Marine Corps, or Coast Guard, or the Reserve components thereof, including active duty for training, at least 10 years of which shall have been active commissioned service.

Four officers of the honorary retired list—one of whom has since died—were reretired under section 6 of Public Law 305 and were paid retired pay at the higher rate. As a result of a decision of the Comptroller General of May 6, 1947 (B-63359), the payments of retired pay to these officers under Public Law 305 were checked, but the checkages were held in abeyance pending consideration of this legislation.

One additional officer who was reretired under section 6 of Public Law 305 was not paid in view of the Comptroller's decision.

In addition to the foregoing, four officers on the honorary retired list who were placed thereon under section 309 of the Naval Reserve Act of 1938, and entitled to retired pay under section 310 of the Naval Reserve Act, would be entitled to a recomputation of their retired pay based upon sections 6 and 7 of Public Law 305.

This situation, Mr. Chairman, affects mostly four officers. These four officers were retired under the provisions of the Naval Reserve Act of 1938, which permitted Reserve officers who had performed certain periods of Reserve duty—not active service, necessarily—to be placed upon the honorary retired list without pay, and they were so retired. World War II came along and those officers returned to active duty, and at the end of World War II were demobilized along with everybody else.

Concurrently, the Congress enacted Public Law 305. Public Law 305 stated in effect that any officer of the Regular Navy, Marine Corps, or Coast Guard, or of the Reserve components thereof, who performed not less than 20 years of active service —at least 10 years of those had to be active commissioned service—could be retired upon their own application and receive retired pay at the rate of 2½ percent of their base and longevity pay times the number of years' service.

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So, as you see, those four officers then became eligible under Public Law 305.

The Navy Department, therefore, to give them the advantages of Public Law 305, which they had justly earned, reretired them under Public Law 305. It was all in due order.

Then they commenced receiving retired pay under Public Law 305. About a year later, the Comptroller General, in reviewing that act, determined that those officers could not be reretired; that they had once been retired and been placed on the honorary retired list, even though it was without pay—and, therefore, the reretirement was not proper—and directed that those officers repay to the Government the retired pay that they had received.

That is the situation, primarily, that this bill seeks to correct, and will correct.

Mr. KILDAY. Now, on the honorary list, they draw no retired pay; is that right?

Commander MARTINEAU. The four officers that I am speaking of did not draw any pay.

Now, there is another situation that I should bring to your attention, Mr. Chairman, that this bill also will correct. Under the same Naval Reserve Act of 1938, which provided an honorary retired list——

Mr. COLE. Will you explain what is meant by an honorary retired list, and how an officer gets there?

If you do not mind, Mr. Chairman?

Mr. KILDAY. Go right ahead.

Commander MARTINEAU. Yes, sir; I will.

The Naval Reserve Act of 1938 established what was known and what is known today as the honorary retired list. It was intended to be a retired list for officers who had been in the Reserve, who may or may not have spent time on active duty, but they had a number of years' service in the Reserve components. For instance, the law provided that any Reserve officer who reached the age of 64 would be eligible to be placed upon the honorary retired list.

Mr. COLE. Irrespective of the length of his service as a Reserve?

Commander MARTINEAU. Irrespective of the length of his service. It said that any officer who had spent not less than 20 years in the Reserve—not necessarily active service—could be placed upon the honorary retired list without pay. Any officer of the Naval Reserve who incurred a physical disability that would not entitle him to the regular retirement, but who could not perform his duties in the Reserve, could be placed upon the honorary retired list or discharged in the discretion of the Secretary of the Navy.

Mr. COLE. Does that apply to that individual irrespective of his length of service?

Commander MARTINEAU. It did, provided that in the opinion of the Secretary of the Navy that officer had made a contribution to the Reserve, and that in the Secretary's opinion he would bring credit to the uniform, and so forth, by giving him a continued naval status.

Now, there was one other means whereby an officer could be placed on the honorary retired list without pay, and that was if he attained certain maximum ages and had not been promoted beyond a certain grade. For instance, an officer who became 40 years of age and was still an ensign, or a lieutenant, junior grade, could be placed by the

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Secretary of the Navy on the honorary retired list for what you might call service in grade.

Mr. JOHNSON. Could I ask a question right there?

Commander MARTINEAU. Yes, sir.

Mr. JOHNSON. 305 is the statute that places him on the retirement list in the highest grade that he held.

Commander MARTINEAU. That is correct. That came later, Mr. Johnson.

Mr. JOHNSON. Yes, sir; I understand that. I just wanted to identify the statute, that is all.

Commander MARTINEAU. This was in 1938, as you will see. The situation I have been describing covers entirely retirements on the honorary list without pay.

Now, the 1938 act had also a provision in it whereby a Reserve officer could be placed on the honorary list with pay. It provided that a Reserve officer or an enlisted man who had put in 30 years on active service could be placed upon the honorary retired list with 50 percent of his base pay and longevity—just a flat 50 percent, regardless of the length of service—and an officer or enlisted man of the Reserve could be placed upon the honorary retired list with pay if he had spent 20 years on active duty, providing that 10 of the past 11 years had been spent on active duty, with 50 percent pay.

So, we now have five other officers who were retired and placed on the honorary retired list with pay under the 1938 act of the flat 50 percent. It was 50 percent, or nothing—no more and no less. And they have been drawing that pay.

Now, they, too, returned to active duty and served in World War II and had considerable amounts of active duty, 20 years, 25 years, and in some cases 30 years were earned for pay. They are still limited to 50 percent under the 1938 act, although they have earned higher retirement pay under Public Law 305 that you just mentioned, Mr. Johnson.

Mr. KILDAY. Not only more pay but a higher grade.

Commander MARTINEAU. But a higher grade.

Mr. KILDAY. When he retired after the Second World War because of 305, he retired in the highest grade satisfactorily held during the war.

Commander MARTINEAU. During World War II.

Mr. KILDAY. So, there are two things involved.

Commander MARTINEAU. Yes, sir.

Mr. KILDAY. The increased pay because of the additional length in his second retirement, and the increase over the flat 50 percent.

Commander MARTINEAU. That is correct, sir.

Now, of the officers in the group I just named—those who were on the honorary retired list with pay—there is only one who was promoted during World War II. You understand they were all quite elderly men and they had fairly high rank. They were assigned largely to administrative jobs because of their age and physical condition, and so forth. Only one officer, a Captain Laighton, was promoted to the temporary grade of captain during World War II. So far as benefiting by the highest rank under Public Law 305, they had no higher rank than what they had previously held, except for Captain Laighton.

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Mr. PRICE. What if they had held higher rank? How about the case of one that does hold higher rank, will this retire him at the higher rank?

Commander MARTINEAU. It will not be any higher, sir, than the rank for which he had been receiving pay on the honorary retired list.

Mr. PRICE. Technically, these men should not have been reretired, should they? They should have reverted to the retired list. They have a ruling on that in the Army, I know, because I am familiar with at least one case in the Army.

Commander MARTINEAU. That is what the Comptroller General held, sir. The Navy Department at the time, since these men had qualified for a higher pay under the new law (Public Law 305), retired them under Public Law 305, or reretired them; and the Comptroller General said just what you remarked; that you could not do that.

Mr. JOHNSON. What is the estimated financial obligation we will assume if we pass this bill?

Commander MARTINEAU. For the officers whose pay has been withheld, that money has really all been appropriated for. We just had to hold it because of the ruling by the Comptroller. That would be an estimated $56,000 initially, and then an estimated $19,000 thereafter.

Mr. KILDAY. Annually?

Commander MARTINEAU. Annually; yes, sir.

Mr. HÉBERT. Let me get one thing clear in my mind. In other words, these officers involved first retired under the then existing law. Then another law was passed. I have forgotten the number that you referred to. So, after having retired under the then existing law, they then reretired them under a new law which was passed which gave them greater benefits; is that correct?

Commander MARTINEAU. That is correct, sir, although at the time they were originally retired, of course, the new law did not exist.

Mr. HÉBERT. I understand. In other words, they were retired under a then existing law, and then subsequently another law was passed. So you then reretired them in order to give them the added benefits of the new law?

Commander MARTINEAU. That is correct, sir.

Mr. JOHNSON. Well, is this what happened: You retired them first under one law and then, when the new law came and they qualified, you retired them under that later act?

Commander MARTINEAU. That is correct.

Mr. ELSTON. That was because they reentered the service.

Commander MARTINEAU. They had reentered the service and had performed active service throughout World War II.

Mr. ELSTON. So they would not be getting any more if they had never been placed on the honorary retired list in the first place?

Commander MARTINEAU. If they had not come back to active duty in World War II, they would not have qualified under the new law.

Mr. HÉBERT. Excuse me.

Mr. ELSTON. Sure.

Mr. HÉBERT In other words, they were retired before the outbreak of World War II?

Commander MARTINEAU. That is correct.

Mr. HÉBERT. Then they returned to active duty in World War II.

Commander MARTINEAU. That is correct.

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Mr. HÉBERT. Then, after having served on active duty in World War II, they became eligible under the new law, and you retired them under the new law. However, between the first retirement and the second retirement, there was a period of active duty?

Commander MARTINEAU. That is exactly right, sir.

Mr. COLE. Were they back on duty before this second law was passed?

Commander MARTINEAU. Oh, yes, long before. The second law (Public Law 305) that I referred to was passed February 21, 1946.

Mr. KILDAY. They had drawn this retired pay over what period of time?

Commander MARTINEAU. They had drawn this retired pay for a period of approximately 1 year, sir.

Mr. KILDAY. And now the Comptroller General is demanding they refund that money?

Commander MARTINEAU. That is correct, sir.

Mr. KILDAY. Except as to one officer who never did get started?

Commander MARTINEAU. He never did get started.

Mr. JOHNSON. Do you consider, if we did not take this step, that that was discrimination against the little group there that came in?

Commander MARTINEAU. Very definitely.

Mr. JOHNSON. You want to put them on a parity with the rest of them?

Commander MARTINEAU. That is right, sir.

Mr. HÉBERT. In other words, they vacated their retirement service when they returned to active duty; is that correct?

Commander MARTINEAU. That is correct, sir. In other words, when the war started, as the committee well knows, the Navy recalled to active duty every person on the retired list—whether it was with or without pay—if he was almost able to work.

Mr. HÉBERT. And you merely want to put these officers, as suggested by Mr. Johnson, on the same status as everybody else that served actively?

Commander MARTINEAU. That is right.

Mr. COLE. Were there only nine officers on the Navy retired list who went back to active duty?

Commander MARTINEAU. No, far more than that. Only nine got caught in this particular situation.

Mr. COLE. Why is that? Why would not they all get caught, the same as these nine?

Commander MARTINEAU. It is just the honorary retired list, sir. You see, there were officers who were placed on the honorary retired list before World War II who also came back to active duty in World War II, but by the time they finished their World War II service they still did not have enough service to qualify under Public Law 305. These people were close to having 20 years of active service when they were retired in 1938; and, having served in World War II, that put them over the hump, so to speak, and they had 20 or more years of active service.

Mr. KILDAY. Why would not a man who retired, say, in 1938 have been entitled to full retirement?

Commander MARTINEAU. Well, sir——

Mr. KILDAY. He would have been a veteran of the First World War.

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Commander MARTINEAU. Well, the honorary retired list applies only to the Naval Reserve. And the qualifications for it were not minimum periods of active service. They were simply minimum periods of inactive service, or service while as members of the Naval Reserve. And retirement, certainly up to and including a good part of World War II, was restricted entirely to a qualification of active Federal service; and, as a rule, it was only the Regular who met those qualifications of active Federal service.

Mr. KILDAY. So, this 20 years was not necessarily active Federal service. It was their total service?

Commander MARTINEAU. For their original retirement, you mean?

Mr. KILDAY. Yes.

Commander MARTINEAU. For the original retirement, that is correct. But, for the reretirement under Public Law 305, that was 20 or more years of active service.

Mr. BLANDFORD. This just applies, Mr. Chairman, to that handful of officers who before the war had accumulated a rather substantial number of years of active duty. It was very unusual, for example, before 1938 to have a Reserve in the Navy—even on active duty—for periods in excess of 2 weeks or a month or a year. Some of these people had accumulated 12 or 13 years of active duty, but they had also been in the Reserves for 20 years; and because they were in the Reserves for 20 years they qualified to go on the honorary retired list, which is just an honor, without pay. Then they came back, because they were recalled to active duty, and served a sufficient length of time so that, when the act was passed in 1946 which gave retirement for 20 years of active service, the time they had spent previously on active duty, plus the new time, gave them a total of 20 years of active duty; and they then qualified under Public Law 305, so the Navy thought, for retirement at half pay or the number of years times two and a half.

Then the Comptroller General said, "You cannot reretire these people; they have already been retired to the honorary list, and when you call a man back to active duty from the naval honorary list he has to revert back to the honorary retired list and is not eligible for retirement under Public Law 305.

This corrects that inequity, because those people and the Navy thought, of course, that they were entitled when the new law passed to count all of their active-duty time that they had spent in the past toward retirement.

Mr. PRICE. Will this correct this only for these particular cases, or for——

Mr. BLANDFORD. There is not anything comparable in the Army, that I know of.

Mr. PRICE. On the question of rank, there is.

Mr. BLANDFORD. I do not——

Mr. PRICE. This would not correct it on the question of rank? For instance, if a man were called off the retirement list as a colonel and subsequently became a general, would he revert back to the retired list as a colonel or could he be retired as a general?

Mr. BLANDFORD. You see, you have this situation: The people who were on the retired list originally were commanders, lieutenant commanders, a rear admiral, and some captains. As Commander Martineau has indicated, only one officer was recalled from the honorary list and promoted.

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Mr. PRICE. I understand that, but what I want to know is whether this would cover the situation in general, or just this particular group?

Mr. BLANDFORD. Just for this particular group, because the other people who were on a retired list—not an honorary list, but a retired list—are eligible for the highest rank attained. They revert to the retired list, but with the highest rank they attained.

Mr. PRICE. The Comptroller General has ruled differently.

Mr. BLANDFORD. No. You see, they revert, but they revert with the highest rank attained.

Mr. PRICE. They revert to their previous rank on the retired list. That is something we should go into, I think, Mr. Chairman.

Commander MARTINEAU. Not in the Navy, sir.

Mr. BLANDFORD. I see what you mean, in the Army.

Mr. KILDAY. This law only applies to the Navy.

Mr. JOHNSON. Did not we pass this law in the last Congress, that is, through the House? We had this problem up once, and I think we passed it in the House.

Commander MARTINEAU. That is correct; the House did pass this bill last year.

Mr. JOHNSON. I thought so.

Commander MARTINEAU. Near the end of the session.

Mr. JOHNSON. Yes.

Commander MARTINEAU. And it did not get through the Senate.

Mr. BLANDFORD. Mr. Chairman, I think I should call to the attention of the subcommittee, so the record will show that we considered this, the fact that this proposed law states that the term "Reserve components," as used in section 6 of the act approved February 21, 1946—which is Public Law 305—shall include officers on the honorary retired list of the Naval Reserve or Marine Corps Reserve.

Now, title III of Public Law 810, the well-known retirement law, provides that Reserves may be retired.

Now, the question may well arise—and I think anything we may say in the record may help the Comptroller General to make up his mind on this point—whether people who are now on the honorary retired list who may possibly be eligible for retirement under Public Law 810 may not be eligible if he applies the same reasoning as he has to this group—unless you construe section 301 (b) to protect this group—which says that the Secretary of the Navy is authorized to establish a United States Naval Reserve retired list, to include the names of all officers and enlisted personnel of the Naval and Marine Corps Reserves who are granted retired pay under the provisions of this title, the provisions of Public Law 305, Seventy-ninth Congress, or any law hereafter enacted to provide retired pay for such officers and enlisted personnel.

Now, it says "Public Law 305, Seventy-ninth Congress," which was then in existence, and the Comptroller General has ruled that people from the honorary retired list are not members of the Reserve components for purposes of Public Law 305.

Our record should indicate, negatively or affirmatively, that we consider the phrase "Public Law 305, Seventy-ninth Congress" as amended by this bill to include these people, so that they will be eligible for retirement under title III of Public Law 810.

I do not know if I made that clear, but you have a very technical point there which is liable to come up in the future as to the retirement

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of Reserves. The Navy is not particularly concerned, because they believe that the Comptroller General will rule that these people are eligible. But I think the record should show that we also considered it.

Commander MARTINEAU. Could I make a comment on just one point you raised there, Mr. Blandford? I do not believe it will be so much a matter of these particular people being able to qualify under 810——

Mr. BLANDFORD. No; not these.

Commander MARTINEAU. Because they are already retired. It is other people on the retired list who do not qualify under this but will qualify under 810.

Mr. BLANDFORD. There may be a substantial number of people who will in the future, upon attaining the age of 60, and meeting all the qualifications of title III of Public Law 810, be eligible for Reserve retirement, unless the Comptroller General again says that, once on the honorary retirement list, you never can be reretired under the provisions of title III of Public Law 810.

Mr. ELSTON. Could not we add a section to this act and take care of it so there would never be any question about it?

Mr. BLANDFORD. It is not considered absolutely necessary, Mr. Elston, as far as the Navy is concerned, because this bill now applies only to the Navy, and they feel that the Comptroller General will rule in their favor.

If the record shows that we consider that these people now on the honorary retired list will be included as members of the Reserve components under Public Law 305, it will be sufficient to enable them to qualify for retirement under Public Law 810 upon attaining the age 60. The only catch would be as to whether Public Law 305, Seventy-ninth Congress, as mentioned in Public Law 810, applies only to Public Law 305 as it then existed, because this phrase does not say "Public Law 305, Seventy-ninth Congress, now in effect, or as may be hereafter amended."

Mr. JOHNSON. In the hearings on that bill, I do not think we ever referred to anybody on an honorary list. I do not remember any such testimony.

Commander MARTINEAU. Well, 810, Mr. Johnson, I believe you will recall, addressed itself to the honorary retired list to this extent: It excluded people on the honorary retired list from counting time spent on the honorary retired list for credits under 810.

Mr. JOHNSON. Frankly, I do not remember that, and I sat through all the hearings. But it probably was brought out, if you remember it.

Commander MARTINEAU. That is a provision in the law as it was passed.

Mr. JOHNSON. I think it was intended to cover this kind of a case; do you not? Or we ought to cover it, I think.

Commander MARTINEAU. Certainly it would be an injustice if those people were held off because a person on the honorary retired list, without pay, who qualified for 810 should get it, certainly.

Mr. JOHNSON. Do you not think it best, like Mr. Elston mentioned, if we want to do that, to make a specific reference to this act, so there will be no doubt about it? Otherwise, you will be back again with another similar situation later on?

Commander MARTINEAU. I believe it would, sir.

Mr. KILDAY. Well, will you suggest language to accomplish that?

Commander MARTINEAU. Yes, sir.

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Mr. COLE. I should like to inquire of Commander Martineau if tion 2 of this bill does not clarify the thing the way that you feel should be clarified, by making this bill retroactive to February 21, 46. This bill amends Public Law 305, to which you refer, as of bruary 21, 1946. Now, your Public Law 810 was passed after bruary 21, 1946. So, this amendment would be included within provisions of 810.

Commander MARTINEAU. Well, I would be afraid of only one ng, Mr. Cole. This bill and the problem we are talking about this rning refer only to those persons on the honorary retired list who ve qualified for pay under Public Law 305. Now, we have many ier people on the honorary retired list who have not and will not alify for pay under Public Law 305, but in due time they may come eligible to receive retired pay under Public Law 810. That the problem. We are afraid, from other decisions that the Comp-ller has made, that he will say, "Yes; this man has met all the quali-ations of 810, but he is on the honorary retired list at age 60, and is not in the Navy for this purpose."

Mr. JOHNSON. I think that is especially persuasive, because we erred there to those on the honorary list and cut out the right to mpute the time that they were on the list as an honorary member.

Commander MARTINEAU. That is right, sir.

Mr. JOHNSON. And he might reason from that as you stated, unless put a provision in this bill that it would not take effect.

Commander MARTINEAU. It would certainly settle it beyond all ubt if you would write it into this bill.

Mr. BLANDFORD. Well, if you are going to make that change we ight just as well raise the point that the Senate raised after they d passed the bill concerning the retroactive features of the bill. If u make one amendment, you might just as well make the other endment: that no retroactive pay increase shall accrue to persons retofore compensated under the provisions of section 310 of the aval Reserve Act of 1938.

Commander MARTINEAU. Well, I have been thinking about that d I believe if you put that in it may discriminate against one ficer here.

Mr. BLANDFORD. The one who was promoted?

Commander MARTINEAU. It will discriminate against Captain eighton.

Mr. BLANDFORD. Who would be eligible otherwise to receive retire-ent at the highest rank attained?

Commander MARTINEAU. There were three people who received ay under 305 for a period of a year. They now face a retroactive eckage.

Mr. KILDAY. I would suggest that Commander Martineau and r. Blandford confer on this and bring us some suggested language.

Mr. BLANDFORD. Yes, sir.

Commander MARTINEAU. All right, sir.

Mr. KILDAY. You might explore with the Army and Air Force hether they have a comparable situation which should be taken are of in this bill.

Mr. BLANDFORD. All right, sir.

Mr. KILDAY. When would you be ready with that?

Mr. BLANDFORD. We can do it this afternoon, I am sure, and have t ready tomorrow morning, if necessary.

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Mr. KILDAY. Is anything scheduled for tomorrow?

Mr. BLANDFORD. I do not know of any subcommittee meeting being scheduled.

Actually, if the committee would like to report the bill with suggested amendments——

Mr. COLE. I think we had better look at it, first.

Mr. PRICE. Would it be germane to bring the Army and Air Force retirement situation, on an equal footing with the Navy, also in this bill, or would that be going too far?

Mr. BLANDFORD. The only thing wrong with that, Mr. Price, is that that is very likely to get into a controversial issue. This particular act is aimed at the relief of four people who now face checkage, and five people who are not eligible for something that they really should be eligible for. If we raise a controversial issue it might either kill the bill or delay it just that much longer.

Mr. KILDAY. Suppose you get ready and we will meet again on it in the morning. It will not take us long.

Mr. BLANDFORD. All right, sir.

Mr. JOHNSON. I do not see how anybody in the Army or Navy is concerned.

Commander MARTINEAU. I do not think they have a comparable problem.

Mr. KILDAY. Do we have anything else today?

Mr. BLANDFORD. No, sir; that is the only thing today.

Mr. KILDAY. Then we will go ahead tomorrow morning at 10 o'clock.

(Whereupon, at 10:35 a. m., the subcommittee adjourned.)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 3,
Friday, February 25, 1949.

The subcommittee met, at 10 a. m., Hon. Paul J. Kilday, chairman presiding.

Mr. KILDAY. The committee will be in order.

When we adjourned yesterday, Mr. Blandford and Commander Martineau were to confer on a proposed amendment. I believe you have one ready?

Mr. BLANDFORD. Yes, sir.

Mr. KILDAY. You can read it.

Mr. BLANDFORD. We have written the following amendment which we think will solve the problem of members on the honorary retired list who might otherwise be ineligible for retirement under title III of Public Law 810. We suggest the following language: Strike out the period on line 8, insert a comma and add the words:

and that the term "Naval and Marine Corps Reserve," as used in subsection (b) of section 301, Public Law 810, shall include officers and enlisted personnel on the honorary retired list of the Naval Reserve or Marine Corps Reserve established by section 309 of the Naval Reserve Act of 1938, as amended, 34 U. S. C., 855 h.

301 (b) of Public Law 810, title III, states:

The Secretary of the Navy is authorized to establish a United States Naval Reserve retired list to include the names of all officers and enlisted personnel of

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Naval and Marine Corps Reserve who are granted retired pay under the pro-
ons of this title, the provisions of Public Law 305, Seventy-ninth Congress, or
law hereafter enacted to provide retired pay for such officers and enlisted
onnel.

This amendment, therefore, will include or make eligible those
ple on the naval honorary retired list who might otherwise not be
ible because of having previously been retired to the honorary
red list.

t does not in any manner attempt to establish any new qualifica-
n under title III of Public Law 810. In other words, all of the
er requirements must be met, but this will avoid the pitfall that
ne of these people have innocently fallen into by allowing themselves
be placed on the honorary retired list, all of which took place, of
rse, before the retirement of Reserves was ever contemplated.
t in view of the previous decision of the Comptroller General, it
s felt that the Comptroller General might well rule in the future
t having been once retired on the honorary retired list such persons
uld henceforth not be eligible to be retired again under Public
w 810. We feel that this amendment will avoid that situation.

I have asked also Colonel Lancefield of the Army to state the posi-
n of the Army with regard to this amendment and to this proposed
islation and to the problem that arose yesterday as to an honorary
ired list for the Army. There is such a list, but it is not statutory.
is a departmental list. And I have asked Colonel Lancefield to
plain that to us. If I may ask Colonel Lancefield to testify.

Mr. KILDAY. Commander Martineau, you agree with the state-
nt Mr. Blandford has made with reference to the effect of this
endment as it relates to the question that was raised yesterday?

Commander MARTINEAU. I do, sir.

Mr. KILDAY. Let us hear from the colonel.

Colonel LANCEFIELD. I am Colonel Lancefield, of the legislative
d liaison of the Army, and I have here with me Colonel Woodbury,
ersonnel and Administration Division.

Mr. Chairman and members of the committee, Mr. Blandford's
atement as to our situation and position is accurate and correct in
l respects. We have an honorary retired list in the Army which
nlike the one for the Navy established in the Naval Reserve Act of
938 was simply created by a departmental order in 1946, for the vari-
us categories of persons in it. The basic qualification was that an
fficer, to be on the honorary retired list must have served 15 years
r be retired for physical disability or have served during an emer-
ency. It was purely an honorary recognition of those who had ren-
ered creditable service in the Army. And at the time it was estab-
ished it was not intended to and did not entail or provide any pay or
moluments or any other privileges except the recognition.

The Army has no opposition to S. 278 nor to the suggested amend-
nent thereto.

I might say that there are and will remain certain other problems
with regard to title III of Public Law 810, with respect to the in-
terpretation and the qualification. And we have been and are study-
ing those. However, I do not understand it is the purpose of your
committee to go into those at this time.

Mr. KILDAY. But you have no situation comparable to that con-
fronting this small group affected by the bill?

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Colonel LANCEFIELD. No, sir, we have no comparable situation because since our honorary retired list is purely a departmental order it does not have any efficacy or effect so far as the retirement or the return of people thereto would be concerned.

Mr. KILDAY. Not being statutory, you do not contemplate any difficulty through the Comptroller General's office of a ruling that it then constituted retirement and that the man could not subsequently be retired?

Colonel LANCEFIELD. No, sir.

Mr. KILDAY. And it is actually not retirement because it is not established by statute?

Colonel LANCEFIELD. No, sir. The point has not thus far been raised and I do not believe it is necessary for us to anticipate it.

Mr. KILDAY. Any further questions?

(No response.)

Mr. BLANDFORD. There is one other point, Mr. Chairman, that should be inserted in the record and that is the question of costs. In order to clarify that situation, Commander Martineau would like to explain that this proposed legislation will not involve any new obligation of funds in view of the fact that funds have already been set aside for the amount that has been checked and in the 1950 fiscal budget there is a sum set aside to pay these people that are taken care of in this proposed legislation.

Mr. KILDAY. Did you want to elaborate on that, Commander?

Commander MARTINEAU. Well, it is not necessary to elaborate much further on what Mr. Blandford has just said, except to again emphasize to this committee that this bill does not involve the expenditure of any additional money to the Government. We referred to certain sums yesterday, but that is money that is already appropriated for, but under this particular decision has been withheld and this bill, if it is enacted, will simply authorize that money to now be expended.

Mr. KILDAY. And relieve the officers from paying back the checks that have been made against them?

Commander MARTINEAU. That is correct ,sir.

Mr. KILDAY. That money has already been expended. It just relieves them of the obligation of repaying to the Government the amount that they had received.

Commander MARTINEAU. That is correct, sir. And, of course, you understand that the retired pay that we thought these people were entitled to has been entirely withheld from them.

Mr. KILDAY. That is right.

Mr. HÉBERT. In other words, there is no money that has been paid to them that would have to be given back in the event this legislation were not adopted?

Commander MARTINEAU. There is.

Mr. HÉBERT. Oh, there is?

Commander MARTINEAU. There is.

Mr. HÉBERT. Besides that which is being held now?

Commander MARTINEAU. That is correct, sir. They were paid for a period of about a year.

Mr. HÉBERT. Yes.

Commander MARTINEAU. And then the Comptroller General's decision was made, their payment was stopped and they owed the

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overnment that much money. Now, of course, since the date eir pay was stopped under the law under which they retired they ve accumulated some more, but that has not been paid them.

Mr. HÉBERT. That has been held in escrow?

Commander MARTINEAU. Right.

Mr. BLANDFORD. I might also add, Mr. Chairman, that with this nendment, of course, we are not confining this legislation to the nine rsons that were involved in the original legislation. I think that ould be noted in the record, that the language here will apply to all ose who would be otherwise eligible, who are now on the honorary tired list insofar as retirement under title III is concerned. We are king care of possibly a larger problem, even though this bill is aimed rectly at the 9 persons.

Mr. KILDAY. That is just in case other cases should develop?

Mr. BLANDFORD. This is anticipatory of a Comptroller General's cision which might preclude people on the honorary retired list from herwise qualifying for retirement under title III of Public Law 810 view of the fact that they have already been retired on the honorary tired list:

Mr. HÉBERT. Well, the language of your bill is all-inclusive?

Mr. BLANDFORD. It is now with the amendment, yes, sir.

Mr. HÉBERT. That is correct.

Mr. KILDAY. If there is no objection, we will take up for considera- on S. 278, covering the same subject, which has already passed the nate, rather than House Bill 1761.

Mr. HÉBERT. Mr. Chairman, I move a favorable——

Mr. KILDAY. First on the amendment.

Mr. HÉBERT. I move that S. 278 be amended in accordance with ie language that was submitted by the staff.

Mr. KILDAY. Is there objection?

(No response.)

Mr. KILDAY. If not, the amendment will be adopted.

Mr. HÉBERT. Mr. Chairman. I move a favorable adoption of .278 as amended.

Mr. KILDAY. All those in favor, signify by saying "Aye."

(Chorus of "Aye".)

Mr. KILDAY. Those opposed, "No".

(No response.)

Mr. KILDAY. The bill will be reported.

Mr. BLANDFORD. There is no other business, Mr. Chairman.

Mr. KILDAY. We will stand adjourned.

(Whereupon, at 10:40 a. m., the committee adjourned.)

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[No. 25]

SUBCOMMITTEE HEARINGS ON S. 629 AND H. R. 2434 TO AUTHORIZE THE DISPOSITION OF CERTAIN LOST, ABANDONED, OR UNCLAIMED PERSONAL PROPERTY COMING INTO THE POSSESSION OF THE TREASURY DEPARTMENT, THE DEPARTMENT OF THE ARMY, THE DEPARTMENT OF THE NAVY, OR THE DEPARTMENT OF THE AIR FORCE, AND FOR OTHER PURPOSES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 3,
Tuesday, February 15, 1949.

The subcommittee met at 10 a. m., Hon. Carl T. Durham (chairman) presiding.

Mr. DURHAM. The next bill is S. 629, companion bill H. R. 2434. Who is here to testify?

Colonel MUNSON. Colonel Romain, from the Office of Quartermaster General.

Mr. DURHAM. Colonel, will you please proceed.

Colonel ROMAIN. I have a statement here, sir, which I will read, with your permission.

Mr. DURHAM. All right. Proceed to read your statement.

(S. 629 is as follows:)

[S. 629, 81st Cong., 1st sess.]

AN ACT To authorize the disposition of certain lost, abandoned, or unclaimed personal property coming into the possession of the Treasury Department, the Department of the Army, the Department of the Navy, or the Department of the Air Force, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, respectively, are hereby authorized to dispose of by sale or otherwise, one year after date of receipt, all lost, abandoned, or unclaimed personal property which is now or may hereafter come into the possession, custody, or control of the Treasury Department, the Department of the Army, the Department of the Navy, or the Department of the Air Force, as the case may be: *Provided*, That an effort shall be made to determine and locate the owner or owners thereof, or their legal representatives, and that in all cases where the owner thereof, or legal representative, has been determined the property shall not be sold or otherwise disposed of for a period of ninety days after written notice has been sent to his last known address.

SEC. 2. The net proceeds received from the sale of any such property by the Treasury Department, the Department of the Army, the Department of the Navy, or the Department of the Air Force shall be covered into the Treasury as miscellaneous receipts.

SEC. 3. Claims for the net proceeds, if any, of such property so disposed of may be filed with the General Accounting Office by the rightful owners or their legal representatives at any time prior to the expiration of three years from the date of the disposal of the property and, if not so filed, are barred from being acted on by either courts or the accounting officers.

SEC. 4. The Secretary of the Treasury, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, respectively, are authorized

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to prescribe such rules and regulations as may be necessary to carry out the purposes and provisions of this Act.

SEC. 5. Any property coming within the provisions of this Act which may be delivered to the Soldier's Home under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force shall be limited to papers of value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, or other articles valuable chiefly as keepsakes.

SEC. 6. This Act shall not be construed as amending or repealing the Act of March 29, 1918 (40 Stat. 499); article 112 of section 1, chapter 11, of the Act of June 4, 1920 (41 Stat. 809); the Act of February 21, 1931 (46 Stat. 1203); the Act of December 28, 1945 (59 Stat. 662), as amended; or the Act of August 2, 1946 (60 Stat. 846–847), as amended.

Passed the Senate February 8, 1949.

Attest: LESLIE L. BIFFLE, *Secretary.*

Colonel ROMAIN. Following is a brief résumé of factual data on the proposed legislation to authorize the disposition of certain lost, abandoned, or unclaimed personal property coming into the possession of the Treasury Department, the Department of the Army, the Department of the Navy, or the Department of the Air Force, and for other purposes.

This property consists of a miscellaneous assortment of cartons, chests, footlockers, crates, wooden boxes, traveling bags, and suitcases, containing all types of civilian clothing, men's and women's, including trousers, shirts, dresses, underwear, et cetera. This property was generated as a result of mass movement of troops during the war years during which a tremendous amount of personal property was lost, abandoned, or remains unclaimed.

Extensive efforts have been made to locate the owners of this property without success. The Departments have concentrated this lost property at central locations and are now desirous of further disposition of it. The property was received at our central agencies from five main sources: (*a*) Common carriers; (*b*) oversea concentration points; (*c*) collected from the battlefield; (*d*) ports of embarkation; (*e*) posts, camps, and stations in the United States.

There are approximately 258 tons of the above property stored at the Army Effects Bureau, Kansas City, Mo., and the New York, Seattle, and San Francisco ports. This represents about 10 freight carloads. At the present time, there is no way of determining how large a quantity will continue to return from oversea theaters.

About a week ago this office received a call from the New York Port of Embarkation with reference to disposition instructions for approximately 200 containers of unclaimed baggage. Instructions were issued that this baggage was to be shipped to the Kansas City depot.

With reference to section 5 of the proposed bill, property designated for the Soldiers' Home is of such nature that it is valued principally as keepsake and does not represent too much in the way of dollar value.

The 1-year holding-period requirement is necessary, based on the condition of the property and on past experience of attempted disposition. On one occasion, the Army Effects Bureau at Kansas City, Mo., opened and inventoried 1,200 cases that had been on hand from 12 to 18 months. Less than one-tenth of 1 percent of the containers opened were disposed of to the rightful owners.

In the event this bill is passed, it will enable the departments indicated above to dispose of lost, abandoned, or unclaimed baggage in

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minimum of time which will result in the release of valuable storage ace and personnel for other missions.

Mr. DURHAM. Does that complete your statement?

Colonel ROMAIN. That is our statement, yes, sir.

Mr. DURHAM. Are there any questions?

Mr. BLACKNEY. Every effort, I assume, has been made to contact e lawful owner, if such were possible?

Colonel ROMAIN. That is correct, yes, sir. Addresses are obtained om the Adjutant General and notifications that the property is ere are sent out.

Mr. ARENDS. What does this constitute mostly—clothing and ings of that nature?

Colonel ROMAIN. Mostly clothing and personal effects. But there e also some souvenirs.

Mr. ARENDS. And these will be turned over to the Soldiers' Home?

Colonel ROMAIN. Yes, sir.

Mr. ARENDS. In other words, it will be mostly disposition of othing?

Colonel ROMAIN. The disposition of clothing, yes, sir.

Mr. ARENDS. And this has all accumulated from World War II—ost of it?

Colonel ROMAIN. Yes, sir; principally from World War II.

Mr. ARENDS. You have held most of it about 3 years, then—or 4 ars?

Colonel ROMAIN. Some of it over that time, sir.

Mr. DURHAM. Could you dispose of this property through your gular established Quartermaster stores?

Colonel ROMAIN. No, sir.

Mr. DURHAM. You couldn't do that?

Colonel ROMAIN. Our regulations don't permit us to do that. This roperty does not belong to the Government.

Mr. ARENDS. What is the approximate value of it?

Colonel ROMAIN. I couldn't give you that, sir. It would just be a uess.

Mr. ARENDS. A lot of it is not invery good shape, I imagine?

Colonel ROMAIN. No, sir; it isn't valuable. We don't think it is aluable from a money standpoint.

Mr. DURHAM. It would give you authority to dispose of it without ringing it all the way back to the United States, at heavy expense, o the port of embarkation from overseas?

Colonel ROMAIN. I didn't quite understand your statement.

Mr. DURHAM. Would it give you authority to dispose of it before you brought it back to the coast of America?

Colonel ROMAIN. No, sir. It must be brought here and held at least for a year before you can dispose of it.

Mr. DURHAM. Any objections to the bill?

Mr. ARENDS. Let me ask one more question. In the event some of these items were placed in the care of the Soldiers' Home and eventually the rightful owner came in with a claim, would he get them back again?

Colonel ROMAIN. There is a provision in the bill for claims. It is section three, sir.

Mr. DURHAM. I am afraid he would never get it if he filed a claim under all the red tape it involves.

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Colonel ROMAIN. He might not get it.

Mr. DURHAM. Couldn't you write a more simple provision of giving the Secretary of the Army the right to restore it to him, without going through the General Accounting Office? Would it be possible?

Colonel ROMAIN. That is the normal procedure for these funds which are not apparently the property of somebody at the time they generate.

Mr. HARLOW. Mr. Chairman, the distinction to be drawn here is that this is not the property itself but the proceeds from the sale of the property.

I might say, sir, the bill, as you can see from the corrections penciled on it, requires a large number of corrective amendments. There is a number of drafting changes that I belive the committee will agree are necessary to this piece of legislation.

I may suggest, sir, that the bill be either held over until these corrections are made and submitted to the committee as a new bill or that the committee strike out all after the enacting clause of it and engage in a drafting process here this morning, whichever the committee would prefer to do.

Mr. DURHAM. Are the Departments in accord on the amendments?

Mr. HARLOW. I brought them to the attention of the Departments, and they are in substantial agreement with the changes suggested.

Colonel MUNSON. That is right.

Mr. ARENDS. I made a motion that we carry this bill over until these changes can be made, if that is in agreement with the Department.

Mr. DURHAM. It is so ordered.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 3,
Thursday, February 24, 1949.

The subcommittee met at 10 o'clock a. m., Hon. Carl T. Durham (chairman) presiding.

Mr. DURHAM. The committee will come to order.

We have again before us S. 629, an act to authorize the disposition of certain lost, abandoned, or unclaimed personal property coming into the possession of the Treasury Department, the Department of the Army, the Department of the Navy, or the Department of the Air Force, and for other purposes.

Has the Department someone here this morning to explain the changes made to this bill and to relate what their significance is?

Colonel ROMAIN. Yes, sir.

Mr. DURHAM. Give your full name to the reporter, Colonel.

STATEMENT BY LT. COL. COLEMAN ROMAIN, QUARTERMASTER CORPS, OFFICE OF THE QUARTERMASTER GENREAL

Colonel ROMAIN. My name is Lt. Col. Coleman Romain.

Mr. DURHAM. Colonel Romain, please have a seat and tell us what changes have been made in this bill.

Colonel ROMAIN. This bill came up last week, Mr. Chairman; and, pursuant to discussion between Mr. Harlow and the Legislative and

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Liaison Division of the Army, your committee has been furnished a redraft of the bill, and in connection with the redraft of the bill I would like to make this statement.

Mr. DURHAM. All right, you may proceed, Colonel.

Colonel ROMAIN. It is desired to call your attention to the fact that the second proviso of section 1 of the revised bill is a mandatory requirement that papers of value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, or other articles valuable chiefly as keepsakes shall not be sold but disposed of as provided in section 5 of this act.

It is believed that unless this provision is made optional a great amount of property such as medals, trinkets, and decorations will accumulate at the Soldiers' Home that would impose a burden on them and make them a depot or a warehouse and that is contrary to what we are trying to do. So to preclude this, it is suggested that the second proviso in section 1 be stricken and that section 1 be further amended as follows:

Add after the word "respectively," and before the word "are" in line 4, the following: "subject to the provisions of section 5 of this act."

Mr. DURHAM. Is that all of your statement?

Colonel ROMAIN. That is all I have to say at the moment, sir, in connection with our proposed redraft which was made after consulting with Mr. Harlow.

Mr. DURHAM. Are you speaking now of the second draft exclusively?

Colonel ROMAIN. Yes.

Mr. DURHAM. The second draft would delete the second proviso of section 1?

Colonel ROMAIN. The second proviso; yes, sir.

Mr. CLEMENTE. Are you finished, Colonel?

Colonel ROMAIN. I am finished unless there is any discussion or unless you have any questions.

Mr. DURHAM. Are there any questions?

Mr. DOYLE. Mr. Chairman.

Mr. DURHAM. Mr. Doyle.

Mr. DOYLE. Calling your attention to the middle of the first page of the redraft, in the middle of paragraph 1, after the word "*Provided*," it says "That an effort shall be made to determine and locate the owner or owners thereof." I am a lawyer at home. I am not yet fully familiar with your parliamentary procedure, but this point should be made: You are undertaking in this bill to sell property which may be of some commercial value to some person, provided you can locate that person.

The bill should require something stronger than just an effort. It ought to be "due effort" or "reasonable effort." The way the bill is now written the requirement is not stringent enough.

Colonel ROMAIN. The Army would have no objection to such a change, sir. We do make a diligent effort.

Mr. DOYLE. What effort do you make?

Colonel ROMAIN. I would like Major Conlon, who is in charge of the Army Effects Bureau, to tell you what effort is made.

Mr. DOYLE. Let me make a further observation and, when the major answers, all of it can be answered at once. Five or six lines below my other amendment the bill says, "in all cases where the owner or owners thereof, or his or their legal representative or representatives, has or have

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been determined." I notice in drafting it you left out "his or their heirs or next of kin." In other words, after the word "*Provided*," you say: "That an effort shall be made to determine and locate the owner or owners thereof, his or their heirs or next of kin, or his or their legal representative or representatives," then the third line below that you drop the language "his or their heirs or next of kin."

You limit the requirement of notice to 120 days to the owners and legal representatives. Why aren't you required to give notice of intention to sell to the heirs or next of kin, if you locate them?

Colonel ROMAIN. Major Conlon, could you give an answer to that?

Mr. DURHAM. Can you answer this question, Major?

STATEMENT BY MAJ. WILLIAM CONLON, QUARTERMASTER CORPS, ARMY EFFECTS BUREAU, KANSAS CITY

Major CONLON. Mr. Chairman, in most cases this property that comes into the Army Effects Bureau at Kansas City is unknown and unidentifiable. We have in most instances tried to determine by an inventory of the property and also by checking the property itself with respect to various marks, and so forth, to whom it belonged. We made every effort to determine who the next of kin are but we have been unsuccessful. So, consequently, this property is piling up in storage and in most cases it is just a lot of junk and we have no way of disposing of it.

Now, if by chance, there is some method of identifying the next of kin, the individuals are informed, giving them all the pertinent facts and descriptions of the property. They then express a desire either to have the property shipped to them or their desire that they do not want it.

Mr. CLEMENTE. I take it, then, you have no objection to including "his or their heirs or next of kin" in that language?

Major CONLON. We have no objection. We have no objection to either of your amendments.

Mr. DOYLE. I think we ought to include the term "reasonable effort."

Mr. CLEMENTE. Is there a set pattern of effort you do make, Major, in order to locate the next of kin or heirs?

Major CONLON. No; unless we can determine from the property who would be interested in it.

Mr. CLEMENTE. Suppose you did. Would it be a set pattern then?

Major CONLON. Yes, sir. We inform the people, giving a description of the property and the quantities.

Mr. DURHAM. How large a place do you have now in which to store this property?

Major CONLON. We have a portion of the Kansas City depot. It is not a record center.

Mr. CLEMENTE. Do you have any objection to adding the word "diligent" before the word "effort" to make it read, "a diligent effort shall be made to determine and locate the owner or owners"?

Major CONLON. No; I have no objection.

Mr. DURHAM. At the present time your storage is on Government property?

Major CONLON. Yes, sir.

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Mr. DURHAM. How much personnel is required to take care of this property? How many Army people? I understand you handle the Army and Navy property; is that correct?

Major CONLON. Yes, sir.

Mr. DURHAM. The Navy Department is not doing anything like this?

Major CONLON. I believe that they have some property at one of their depots but we have approximately 250 tons in our storage at Kansas City. We have a small quantity at two of the ports, Seattle and New York, and only recently we shipped approximately a carload from the New York port of embarkation into Kansas City.

Mr. DURHAM. And the Government pays the expense of that transportation all the way to Kansas City?

Major CONLON. Yes, sir.

Mr. DURHAM. And that is the only place you are disposing of this property at the present time?

Major CONLON. Yes, sir.

Mr. DURHAM. You did not say how many people were involved in taking care of and looking after this property.

Major CONLON. The Army Effects Center personnel consists of 50 people at the present time. Only 12 of those are warehouse personnel. The others are administrative personnel handling the records, not only for the unidentifiable property but for the notifying of the next of kin.

Mr. DURHAM. Is any of this personnel civilian?

Major CONLON. Yes, sir; civilian personnel. It would amount to about 12 people, sir.

Mr. DURHAM. Involving quite an expense during the year?

Major CONLON. Yes; and it is piling up with no outlet for its disposition. We are attempting to close out this Effects Bureau by June of this year.

Mr. CLEMENTE. Major, will you require some sort of staff to process this property whether you store it or not, in order to comply with the law, in the event you try to identify the property and notify the next of kin? That would require some sort of staff, would it not?

Major CONLON. Yes, sir; but we have that staff at the present time.

Mr. CLEMENTE. Would the storage of this material require you to enlarge your staff to a great extent if you keep going on this way?

Major CONLON. No; but it would be an indefinable time—we would just continue to hold it to no purpose.

Mr. DURHAM. Do you occasionally ship out some of it when you locate the owners or has it come to the point that you can't locate the owners of any of it?

Major CONLON. We have approximately 7,500 cases at the present time where we can't determine who the property belongs to and it averages about 29 pounds to the case. And then, of course, that is added to by the effects sent in that are picked up at the ports and at some of these posts, camps and stations.

Mr. DURHAM. Have you people made any effort to advertise in the journals or give notice in any way that there is a large amount of lost property stored and that you cannot locate the owners? Have you made any effort to advertise that fact?

Major CONLON. To my knowledge, no. I do not know what the results would be that that would bring.

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Mr. DURHAM. It would be necessary, I think, just to put it in the Journal or Register or other such publication. You can carry it as a news item.

Mr. CLEMENTE. Except that would cause people to come and try to identify property and in turn make more work. Have you had any requests for any of this property from the Veterans of Foreign War posts or from American Legion posts, or does all this property go to the Old Sodiers' Home?

Major CONLON. No; it does not go to the Old Soldiers' Home except keepsake items like sabers and medals, and so forth. The clothing is mostly civilian clothing—miscellaneous shirts and socks, and so forth—which stays at Kansas City and I do not know who would be interested in that except the owners because it has been worn.

Mr. DURHAM. Can't you give it to some of these organizations which are collecting clothing at the present time and shipping it to overseas areas? What would be wrong with that?

Major CONLON. Nothing would be wrong with that, sir, if someone would be willing to sort it, classify it, and so forth.

Mr. DURHAM. Give the old clothing to the Red Cross.

Mr. CLEMENTE. My point is that in American Legion posts, there are welfare officers and relief officers who can probably use the clothes and this would support their efforts. The Red Cross could do a job with that clothing, too.

Mr. DURHAM. There are so many American Legion posts, and they are so scattered over the United States, that it would be very difficult to divide this clothing on the basis of equality.

Mr. CLEMENTE. It would be done only in response to requests for the property.

Mr. DURHAM. Does the Department object to putting in a provision enabling you to turn this clothing over to the Red Cross?

Major CONLON. No, sir; I don't believe there is any objection to that.

Colonel ROMAIN. The point has just been made, Mr. Chairman, that this merchandise at the Army Effects Bureau is similar to the post office's dead-letter operation. Nobody knows to whom it belongs or what is in it.

Mr. CLEMENTE. You can auction it off then?

Colonel ROMAIN. We want to get rid of it. We want to sell it.

Mr. CLEMENTE. That is what happens at the post office.

Colonel ROMAIN. Yes; if you want to give it away. Our primary purpose is to get rid of it and get it out of our hands. We have the job of caring for it and we have it taking up our warehouse space.

Mr. DURHAM. I suppose you have Government uniforms?

Colonel ROMAIN. No, sir; that is Government property. Those are all withdrawn. There is no Government property involved.

Mr. CLEMENTE. Unless it is an officer's uniform.

Colonel ROMAIN. I do not know what is done with officers' uniforms. They do not belong to the Government.

Mr. DOYLE. Do you have any idea what the gross returns on these auctions might be?

Major CONLON. It is hard to determine that, sir.

Mr. DOYLE. Is it a matter of hundreds of dollars or a few thousand dollars?

Major CONLON. Probably a few thousand dollars.

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Mr. DOYLE. Mr. Chairman, in respect to the word "notice" in the proposed draft, would it be an expense to the Government to send a registered letter? As you may know, under our post-office regulations a registered mail letter is more apt to reach an heir or next of kin than an ordinary letter. It seems to me if this property runs into several thousands of dollars in an auction, the heirs of a dead soldier or his next of kin, if he has disappeared, are entitled to more notice than just a letter dropped into the mail, especially with regard to such items as medals.

It might be, in regard to medals and insignia and decorations, there should be a requirement of a registered letter going to the next of kin if you have located such a person, because such items are not the same as discarded clothing. A medal given to a man, it seems to me, is a family heirloom. It is a matter of patriotic possession and something that is certainly worth 25 or 30 cents in the form of a registered letter. A registered letter follows clear through, as you know. The post office goes the limit to find the addressee if a letter is registered; it does not follow through ordinary letters.

One reason I am so concerned in this is that I have personal knowledge of a couple of such cases in my own law practice at home where this problem arose and the families felt considerably hurt that they had not received notice even though the Department had tried to reach them.

I do not know what that would entail in the way of expense. Nevertheless, Section 5 of the redraft does not require any further notice or effort on the part of the Government to reach the heirs or next of kin, even though papers of value, insignia, decorations, watches, and so forth are involved. That is, the Department will have already determined that such items should be kept at the Soldiers' Home and no effort will be made to find the next of kin after it has been determined that the Department has in its possession things of value.

Mr. HARLOW. Mr. Chairman, it is the intent, even though it is not required in section 1, that such property will be transferred to the Soldiers' Home only after 1 year after receipt, during which year a diligent effort will have been made to locate the former owners.

Mr. DOYLE. The bill does not read that way.

Mr. CLEMENTE. The bill should be written to require it within 3 years.

Mr. HARLOW. A requirement has so been written. The owners have 3 years from the date of the receipt of such property by the Soldiers' Home to get it back from the Soldiers' Home.

Mr. DOYLE. I think the statute ought to provide, Mr. Chairman, in the next to the last line on page 1, this:

One hundred and twenty days after written notice by registered mail, giving time and place of intended sale.

Some people are careless and we might be able to put into the hands of many people property that would not otherwise be known of if just a notice of its existence were sent, but if they get notice that their property is going to be sold at a fixed time and fixed place, they are more apt to pay attention to it and try to protect the property against default. That may be too much detail. I presume you follow this procedure anyway.

Colonel ROMAIN. Every reasonable effort is made to do so.

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Mr. DOYLE. I assume that but I think the statute should provide that the time and place of the intended sale should be given in the notice.

Mr. HARLOW. Sale or other disposition thereof.

Mr. DOYLE. Sale or disposition.

Colonel ROMAIN. We see no objection to including in the notice time and place of the intended sale or other disposition.

Mr. DOYLE. Then the heir can more reasonably protect the property.

Mr. DURHAM. Any other questions?

Mr. CLEMENTE. I did not understand the reaction to Mr. Doyle's suggestion of registered mail. If you drop a letter in the mail, that is notice according to your Department's standard, but it may never reach the addressee. What Mr. Doyle is suggesting is to register the letter so the owner will receive the notice.

Colonel ROMAIN. We see what that means.

Mr. DURHAM. It does not mean significant added expense to the Government. You intend to sell the property and recover the cost.

Colonel ROMAIN. I see.

Mr. DOYLE. You will note that on page 2 the expression "papers of value" is used. That might even be title to real estate. It could be invaluable to the heirs or next of kin.

Mr. CLEMENTE. It might be something of such personal significance as a citation.

Mr. DOYLE. It might be a birth certificate. It might be anything. It seems to me the statute ought to specify registered mail notice.

Colonel ROMAIN. There can be no objection to that except a minor technical one in that the Government gets back the money but the Quartermaster Corps operating this does not have its fund reimbursed. We would have to budget for it to carry out your instructions, but if that is the law, we would be very happy to go along with it that way.

Mr. CLEMENTE. Shall we write in this "by registered mail"?

Mr. DOYLE. Yes. I think "by registered mail."

Colonial ROMAIN. There could be a great deal of confusion here because in a good deal of this property the ownership cannot be determined.

Mr. HARLOW. You are covered for that.

Mr. CLEMENTE. If you did locate an heir, he would like to be given the opportunity of first claiming it.

Colonel ROMAIN. Certainly, such a requirement would work no hardship on us and work out for the benefit of everyone concerned.

Mr. DURHAM. If you locate him you send him a registered letter. If you don't locate him, you don't have to. You do this locating entirely by your own effort?

Colonel ROMAIN. By use of the information we have in our files, sir.

Mr. DOYLE. I move, Mr. Chairman, that those changes be inserted in the proper places.

Mr. DURHAM. The clerk will read the bill and we will offer the redraft, as amended, as a substitute for the present bill.

Mr. HARLOW. If I may suggest, sir, instead of reading the bill, we read the revised draft?

Mr. DURHAM. All right. The clerk will read.

Mr. HARLOW (reading):

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Be it enacted by the Senate and House of Representatives of the United States of nerica in Congress assembled, That the Secretary of the Treasury, the Secretary the Army, the Secretary of the Navy, and the Secretary of the Air Force, spectively, subject to the provisions of section 5 of this Act, are hereby author- d to dispose of by public or private sale or otherwise, not less than one year er date of receipt at such storage points as may be designated by the above- ntioned Secretaries, all lost, abandoned, or unclaimed personal property which now or may hereafter come into the possession, custody, or control of the easury Department, the Department of the Army, the Department of the vy, or the Department of the Air Force, as the case may be: *Provided*, That igent effort shall be made to determine——

Mr. DURHAM. That is the offered amendment there?

Mr. HARLOW. Yes, sir.

Mr. DURHAM. Let us write this language in here so we will have e amended version.

Mr. HARLOW. Strike out the word "an" in the proposed bill and sert in its place the word "diligent."

Mr. DURHAM. Proceed with your reading.

Mr. HARLOW (reading):

Provided, That diligent effort shall be made to determine and locate the owner owners thereof, his or their heirs or next of kin, or his or their legal representa- e or representatives, and that in all cases where the owner or owners thereof, his or their legal representative or representatives—

At this point, Mr. Chairman, after the word "representatives," the hrase "his or their heirs or next of kin" should be inserted. After e comma after the word "representatives," insert "his or their heirs next of kin."

Mr. DURHAM. Read.

Mr. HARLOW (reading):

e or have been determined, the property shall not be sold or otherwise disposed prior to the expiration of a period of one hundred twenty days after written tice—

After the word "notice," insert the phrase "by registered mail giving me and place of intended sale or other disposition thereof—

e been sent to his or their last known address.

SEC. 2. The net proceeds received from the sale of any such property by the reasury Department, the Department of the Army, the Department of the avy, or the Department of the Air Force shall be covered into the Treasury as iscellaneous receipts.

SEC. 3. Claims for the net proceeds, if any, of such property so disposed of ay be filed with the General Accounting Office by the rightful owners, their eirs or next of kin, or their legal representatives at any time prior to the expira- on of five years from the date of the disposal of the property and, if so filed—

A comma should be inserted after the word "filed"—

he General Accounting Office shall allow or disallow the claim. If claims are ot filed prior to the expiration of five years from the date of the disposal of the roperty, they shall be barred from being acted on by the courts or the General ccounting Office.

SEC. 4. The Secretary of the Treasury, the Secretary of the Army, the Secretary f the Navy, and the Secretary of the Air Force, respectively, are authorized to rescribe such rules and regulations as may be necessary to carry out the provisions f this Act.

SEC. 5. Any property coming within the provisions of this Act which may be elivered to the Soldiers' Home under regulations prescribed by the Secretary of he Army or the Secretary of the Air Force shall be limited to papers of value, abers, insignia, decorations, medals, watches, trinkets, manuscripts, or other rticles valuable chiefly as keepsakes: *Provided*, That if the rightful owners, their eirs, next of kin, or their legal representatives should establish their right to

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any such property at any time prior to the expiration of three years from the date of the receipt thereof by the Soldiers' Home, they shall be granted possession thereof.

SEC. 6. This Act shall not be construed as amending or repealing the Act of March 29, 1918 (40 Stat. 499); article 112 of section 1, chapter II, of the Act of June 4, 1920 (41 Stat. 809); the Act of February 21, 1931 (46 Stat. 12030); the Act of December 28, 1945 (59 Stat. 662), as amended; or the Act of August 2, 1946 (60 Stat. 846–847), as amended.

Mr. DOYLE. Mr. Chairman, at this time I will offer an amendment to strike out all after the enacting clause of S. 629 and insert the language just read by the professional staff member.

Mr. CLEMENTE. S. 629 makes no reference to property turned over to the Navy. What happens to that property? Section 5 deals only with property which may be delivered to the Soldiers' Home by the Secretary of the Army or the Secretary of the Air Force. What happens to Navy equipment?

Mr. HARLOW. In the case of the Navy, the property is also turned over the the Soldiers' Home.

Mr. DURHAM. Doesn't that happen to Navy property?

Mr. HARLOW. The testimony of the witness was that the Army had Navy property as well.

Major CONLON. We do not have any Navy property at Kansas City. That is at Hill Field.

Mr. CLEMENTE. Do you have any Navy paraphernalia?

Major CONLON. No, sir.

Mr. CLEMENTE. It says the property coming into the possession of the Army and Air Force goes to the Soldier's Home. What happens to the Navy property? Section 5 talks of any property coming within the provisions of this act which may be delivered to the Soldiers' Home under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force shall be limited to papers of value, sabers, insignia, and so forth. But if you happen to get some Navy property that falls into this category, what happens to it?

Major CONLON. The Navy would dispose of it, sir. Do you have anything on that, Colonel?

Mr. CLEMENTE. The Department of the Navy is mentioned all through the rest of the bill. I just wondered what happened to their stuff.

Mr. HARLOW. As far as I am aware, and I don't assert this as fact, there the Navy has no operation comparable to the Army's Soldiers' Home to which such property can be sent. However, I am not in a position to say where that property is sent. There is no Navy representative here to clarify that point.

Mr. CLEMENTE. Mr. Chairman, even if you have a peajacket some way should be shown to dispose of it. The peajacket, of course, would belong to the Navy, but I mean some naval trinket or item of personal property.

Mr. DURHAM. Off the record.

(Discussion off the record.)

Mr. DURHAM. I would like for these statutes mentioned in section 6 of the act, to be included in the record if there is no objection. It is so ordered.

Act of March 29, 1918 (40 Stat. 499):

Be it enacted * * * That hereafter all moneys, articles of value, papers keepsakes, and other similar effects belonging to deceased persons in the naval service, not claimed by their legal heirs or next of kin, shall be deposited in safe

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stody, and if any such moneys, articles of value, papers, keepsakes, or other nilar effects so deposited have been, or shall hereafter be, unclaimed for a period two years from the date of the death of such person, such articles and effects all be sold and the proceeds thereof, together with the moneys above mentioned all be deposited in the Treasury to the credit of the Navy pension fund: *Pro-ded*, That the Secretary of the Navy is hereby authorized and directed to make igent inquiry in every instance after the death of such person to ascertain the ereabouts of his heirs or next of kin, and to prescribe such regulations as may necessary to carry out the foregoing provisions: *Provided further*, That claims iv be presented hereunder at any time within five years after such moneys or oceeds have been so deposited in the Treasury, and, when supported by compe-it proof in any case after such deposit in the Treasury, shall be certified to ngress for consideration.

Article 112 of section 1, chapter II, of the act of June 4, 1920 (41 at. 809):

ART. 112. Effects of Deceased Persons—Disposition of.—In case of the death any person subject to military law the commanding officer of the place of com-nd will permit the legal representative or widow of the deceased, if present, to ke possession of all his effects then in camp or quarters; and if no legal repre-ntative or widow be present, the commanding officer shall direct a summary urt to secure all such effects, and said summary court shall have authority to llect and receive any debts due decedent's estate by local debtors and to pay e undisputed local creditors of decedent in so far as any money belonging to e deceased which may come into said summary court's possession under this ticle will permit, taking receipts therefor for file with said court's final report upon transactions to the War Department; and as soon as practicable after the collec-n of such effects said summary court shall transmit such effects and any oney collected, through the Quartermaster Department, at Government pense, to the widow or legal representative of the deceased, if such be found said court, or to the son, daughter, father, provided the father has not aban-ned the support of his family, mother, brother, sister, or the next of kin in e order named, if such be found by said court, or the beneficiary named in the ll of the deceased, if such be found by said court, and said court shall thereupon ake to the War Department a full report of its transactions; but if there be ne of the persons hereinabove named, or such persons or their addresses are t known to or readily ascertainable by said court, and the said court shall so id, said summary court shall have authority to convert into cash, by public private sale, not earlier than thirty days after the death of the deceased, all fects of deceased except sabers, insignia, decorations, medals, watches, trinkets, anuscripts, and other articles valuable chiefly as keepsakes; and as soon as prac-ticable after converting such effects into cash said summary court shall deposit ith the proper officer, to be designated in regulations, any cash belonging to cedent's estate, and shall transmit a receipt for such deposits, any will or other pers of value belonging to the deceased, any sabers, insignia, decorations, edals watches, trinkets, manuscripts, and other articles valuable chiefly as epsakes, together with an inventory of the effects secured by said summary urt, and a full account of its transactions, to the War Department for trans-ission to the Auditor for the War Department for action as authorized by law the settlement of accounts of deceased officers and enlisted men of the Army. The provisions of this article shall be applicable to inmates of the United tates Soldiers' Home who die in any United States military hospital outside of e District of Columbia where sent from the home for treatment.

Act of February 21, 1931 (46 Stat. 1203):

Be it enacted * * * That the effects in the possession of the General ccounting Office of persons dying while subject to military law, including papers f value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and ther articles valuable chiefly as keepsakes, including those of deceased inmates f the Soldier's Home dying in any United States military hospital, where sent rom said home for treatment, and similar effects hereafter received by the War Department under the provisions of the Act of June 4, 1920 (41 Stat. L. 809; . S. C., title 10, sec. 1584), as amended, shall be delivered to the Soldiers' Home; hat wills or other papers involving propery rights shall be promptly delivered o proper courts of record; that the remaining effects, if the heirs or legal repre-entatives cannot be ascertained, shall be retained by the home intact until three ears from the date of the death of the person on whose behalf they were received

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shall have expired (in the event said period shall not have already elapsed), fo the purpose of delivery to the widow or legal representative of the deceased, o to the son, daughter, father (provided the father had not abandoned the support o his family), mother, brother, sister, or the next of kin in the order named, o beneficiary named in the will of the deceased, upon the establishment to the satis faction of the home of a right thereto.

SEC. 2. (a) That after the expiration of three years from date of death of sai deceased, the Soldiers' Home may sell, either at public or private sale, as deeme most advantageous, all or any of such effects to which a right thereto shall no have been established on behalf of said deceased, his heirs, or legal representatives *Provided*, That decorations, medals, and citations shall not be sold, but shall b disposed of as in section (b) following.

(b) That such of said effects as at the expiration of five years from date of deat of deceased have neither been sold nor a right thereto established on behalf of th deceased shall be finally disposed of by said home in such manner as in the interes of the public it deems most fitting, helpful, and appropriate, either by permanen retention thereof, distribution to the Veterans' Administration, State or othe military homes, museums, or other appropriate institutions, or by their destruc tion, if, in the opinion of the board of commissioners thereof, they no longe possess any value.

(c) That the net proceeds received by the home from the sale of such effect shall be covered into the Treasury to the benefit of the fund "Soldiers' Hom permanent fund (trust fund)," and such principal fund as thus augmented shal draw interest at 3 per centum per annum, payable quarterly to the treasurer o the home.

SEC. 3. (a) Claims for the net proceeds of effects may be filed with the Genera Accounting Office at any time prior to the expiration of six years from date o death of such deceased for action as authorized by law in the settlement of th accounts of deceased officers and enlisted men of the Army (Act of June 30, 1906 34 Stat. 750; U. S. C., title 10, sec. 868), and, if not so filed, are barred from bein acted on either by the courts or the accounting officers.

(b) All claims for the net proceeds of such effects which are allowed by th General Accounting Office shall be certified to the treasurer of the home for pay ment by check, in the amount thus found due and accrued interest thereon, fro the fund "Soldiers' Home permanent fund (trust fund)," hereby appropriate therefor in such amount as necessary. No claim thus allowed or paid shall exce the net proceeds and accrued interest derived from the particular estate an covered into the Treasury as aforesaid.

SEC. 4. That the containers now in the possession of the General Accounti Office, in which are stored the effects enumerated in section 1 hereof, shall b transferred therefrom to the Soldiers' Home to provide for the protection an safekeeping of such effects.

SEC. 5. All laws and parts of laws, insofar as in conflict herewith, are repeale

Act of December 28, 1945 (59 Stat. 662):

Sec. 2. The Secretary of the Navy and his designees are further authori to exercise with respect to claims of military personnel or civilian employees the Navy Department or of the Navy for damages to or loss, destruction, captu or abandonment of personal property occurring incident to their service, t respective powers conferred upon the Secretary of War and his designees the Act of May 29, 1945 (Public Law 67, Seventy-ninth Congress).

Act of August 2, 1946 (60 Stat. 846-847):

SEC. 424 (b) Nothing contained herein shall be deemed to repeal any provisi of law authorizing any Federal agency to consider, ascertain, adjust, settle, det mine, or pay any claim on account of damage to or loss of property or on accou of personal injury or death, in cases in which such damage, loss, injury, or de was not caused by any negligent or wrongful act or omission of an employee the Government while acting within the scope of his office or employment, or s other claim not cognizable under part 2 of this title.

Act of May 29, 1945 (59 Stat. 225):

Be it enacted * * * That the Secretary of War, and such other officer officers as he may designate for such purposes and under such regulations he may prescribe, are hereby authorized to consider, ascertain, adjust, det mine, settle, and pay any claim against the United States, including claims

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retofore satisfied arising on or after December 7, 1939, of military personnel d civilian employees of the War Department or of the Army, when such claim substantiated, and the property determined to be reasonable, useful, necessary, proper under the attendant circumstances, in such manner as the Secretary War may by regulation prescribe, for damage to or loss, destruction, capture, abandonment of personal property, occurring incident to their service, or to lace such personal property in kind; *Provided*, That the damage to or loss, truction, capture, or abandonment of property shall not have been caused whole or in part by any negligence or wrongful act on the part of the claimant, agent, or employee, and shall not have occurred at quarters occupied by the mant within continental United States (excluding Alaska) which are not igned to him or otherwise provided in kind by the Government. No claim shall settled under this Act unless presented in writing within one year after the ident or incident out of which such claim arises shall have occurred: *Provided*, at if such accident or incident occurs in time of war, or if war intervenes within ears after its occurence, any claim may, on good cause shown, be presented hin 1 year after peace is established. Any such settlement made by the retary of War, or his designee, under the authority of this Act and such ulations as he may prescribe hereunder, shall be final and conclusive for all poses, notwithstanding any other provision of law to the contrary.

Mr. DURHAM. Mr. Elston, do you have any question you would like ask about this measure?

Mr. ELSTON. No.

Mr. DURHAM. Do I hear a motion?

Mr. CLEMENTE. I move that in section 5, in the proviso clause, in third line, the number "three" be changed to "two."

Mr. DURHAM. If there is no objection, it is so ordered. Do I r a motion to report the bill S. 629, as amended? Mr. Blackney, you have any questions about this measure?

Mr. BLACKNEY. No.

Mr. DURHAM. Now I will entertain a motion to substitute the guage in the amendment for the provisions of S. 629.

Mr. DOYLE. I so move.

Mr. DURHAM. If there is no objection, the language is substituted the provisions of S. 629 and the bill as amended is favorably re-rted.

(Whereupon at 11 a. m. the committee adjourned.)

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[No. 26]

LL COMMITTEE HEARINGS ON H. R. 1741, H. R. 2546, H. R. 2663

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Wednesday, February 23, 1949.

he committee met, at 10 a. m., Hon. Carl Vinson (chairman) siding.

he CHAIRMAN. Let the committee come to order.

he purpose of the hearing this morning is to receive reports from committees.

call Subcommittee No. 1. Have you any bill to report, Mr. ooks?

Mr. BROOKS. Mr. Chairman and gentlemen of the committee, we e H. R. 1741, a bill to authorize the establishment of a joint long-ge proving ground for guided missiles, and for other purposes. H. R. 1741 is as follows:)

[H. R. 1741, 81st Cong., 1st sess.]

ILL To authorize the establishment of a joint long-range proving ground for guided missiles, and for other purposes

e it enacted by the Senate and House of Representatives of the United States of erica in Congress assembled, That the Secretary of the Air Force is hereby horized to establish a joint long-range proving ground for guided missiles and er weapons by the construction, installation, or equipment of temporary or manent public works, including buildings, facilities, appurtenances, and utili-, within or without the continental limits of the United States, for scientific dy, testing, and training purposes by the Departments of the Army, Navy, l Air Force.

EC. 2. The Secretary of the Air Force is authorized in discharging the authority en in the preceding section to make surveys, to acquire lands and rights or other ests pertaining thereto, including the temporary use thereof, by donation, chase, exchange of Government-owned lands, or otherwise, without regard to tion 3648, Revised Statutes, as amended, in administering the provisions of the t of July 9, 1942 (56 Stat. 654, 43 U. S. C., Supp. 315q).

EC. 3. There is hereby authorized to be appropriated, out of any money in the asury not otherwise appropriated, not to exceed $200,000,000 to carry out the rposes of sections 1 and 2 of this Act.

EC. 4. The Secretaries of the Army, the Navy, and the Air Force are hereby thorized to contribute to the support of the joint long-range proving ground for ided missiles and other weapons to the extent they may deem necessary or visable, including, but not limited to, the allocation for such support of funds ailable to them for such purposes.

EC. 5. The Secretary of Defense may, at his discretion, transfer and reallocate any department, board, or agency within the National Military Establishment or any part of the authority granted herein, and, in connection with such trans- or reallocation, may transfer all or any part of the funds available for the estab- ment or support of the joint long-range proving ground for guided missiles d other weapons.

Mr. BROOKS. Mr. Chairman, this bill was considered by the committee in both open and executive sessions.

The bill, after consideration, was approved by the committee with o amendments, one of which is a relatively minor amendment and

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the other an amendment reducing the amount from $200,000,000 down to $75,000,000 which the committee thought was sufficient to take care of the cost of the long-range proving ground in its first phase. The committee recommended the approval of the bill as amended.

Now, Mr. Chairman, this is a very important bill and the purposes of the bill are very technical. So, with the permission of the Chair I would like to read to the committee the report which is well prepared and which will be filed in connection with the bill.

The purpose of this bill is to authorize the Secretary of the Air Force to establish a joint long-range proving ground for guided missiles and other weapons. This authority contemplates the construction installation, and equipment of necessary public works, either temporary or permanent, within or without the continental limits of the United States. The proving ground is to be used jointly by the Army, Navy, and Air Force for scientific study, testing, and training purposes.

The long-range proving ground proposed by this legislation is a joint venture of the three armed services. All services have need for such a facility in varying degree, and from its inception each service has had equal representation in all phases of the planning.

The project had its inception about 3 years ago when the guided missiles committee of the Joint Chiefs of Staff recognized the necessity for a test range much longer than any existing facility; the maximum range at any present facility is 150 miles. The matter was, therefore, turned over to the Joint Research and Development Board which promptly established, in the fall of 1946, the committee on long-range proving ground, of which Brig. Gen. William L. Richardson, USA, was chairman. This committee consisted of representatives from the Army, Navy, and Air Force, and was assigned as its mission the "examination of the entire question of a single, national, long-range guided missiles proving ground."

That committee determined, first, that there exists an urgent requirement for such a facility and, secondly, as a result of its studies established the necessary characteristics of an ideal proving ground.

As a result of investigation, it was found that a facility of this character would have to be located in a relatively isolated area for reasons of safety and security. It was found also that the ultimate development of the program would require an eventual community of 13,000 inhabitants, consisting of 5,000 military and civilian employees and an estimated 8,000 dependents. Due to the necessity of establishing the installation in a sparsely populated area, it is necessary to provide to a minimum degree housing, shopping, schools, and other necessities of American life.

Testimony was received to the effect that plans for initial construction do not contemplate accommodating 13,000 persons. Only the minimum essential facilities will be included in the initial installation. And that is the reason the committee cut the amount down.

The required facilities for a long-range guided missile proving ground may be divided into three main groups:

1. A base area with suitable launching site, technical, and administrative facilities.

2. Instrumentation range at least 3,000 miles long, thoroughly instrumented by means of observation stations for the first 500 miles and with impact areas at various points along the line of flight.

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3. A suitable climate for year-round operations.

Existing guided missiles proving grounds are not capable of expan-
n in length to accomplish the task of testing missiles at longer
ges than 150 miles. Installations now in operation are those at
ite Sands-Alamogordo, in New Mexico, Point Mugu and Inyokern
California. Even apart from the inability of these facilities to
ndle longer-range missiles, a survey of the work loads of existing
ges by an independent committee of the Research and Develop-
nt Board has disclosed that they will be saturated during the next
years. The services have agreed, therefore, that the long-range
ving ground may be used to test shorter range missiles so long as
s work does not interfere with the primary long-range flight test
sions.

For reasons of military security, the location of the proposed long-
ge guided missile proving ground cannot now be disclosed. How-
r, it has been ascertained that there will be no serious likelihood
hazard to persons or property, or of interference with private and
nmercial interests in connection with the test flying of missiles on
proposed range. The danger will be very small because every
sible precaution will be taken. Means will be provided to dispose
missiles in the air, over a safe area, should they deviate too far off
rse. Normally they will fly so high as to be impossible of detection
ept with special instruments. From a safety standpoint they will
no more dangerous than conventional airplane flying overhead,
l from a nuisance standpoint they will be less objectionable. Most
portant of all, the test range will be located in a region so sparsely
abitated in the areas where there might be any danger that the
zard will be wholly negligible.

The need for a facility of this type is urgent. Experts in the field
convinced that guided missiles with ranges in the hundreds of
les and accuracies acceptable to the military can be developed.
eir development is dependent upon the existence of a suitable range
which to test them. The guided missile development program is
e of our largest research and development programs in which the
vestment to date has amounted to hundreds of millions of dollars.
work was started upon the construction of this facility today it would
needed for testing missiles ready for flight tests before it could be
ced in operation.

Missiles with ranges up to 500 miles will be ready for testing during
49, without a range of sufficient length on which to fly them. If the
rvices are unable to test these and other long-range missiles at time of
mpletion the entire schedule of research and development will be
srupted. Certain other nations have availed themselves of the
rvices of German scientists and technicians and are making vigorous
forts to produce guided missiles of intercontinental ranges—and, by
e way, I notice by the press dispatches that one of these was located
the American occupied zone of Germany some time back. The
sence of suitable facilities in this country could easily make it
ssible for other nations to forge ahead of us in the development of
ng-range guided missiles.

Exact predictions cannot be made at this time as to the relative
portance of guided missiles or the role which they will play in any
ture conflict. Our experts in this field, however, feel it quite likely
at within 10 years we will be replacing present guns and bombs by

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guided missiles, and that within 15 years surface-to-surface guided missiles will have been perfected to a point where they will have important applications in tactical and strategic bombardment operations. These potentialities cannot ultimately be realized unless we energetically pursue research and development and operational experimentation and training.

The proposed project is vigorously supported by the Army and by the Navy. These two services have expressed the view that all the services will enjoy significant advantages as a result of intimate association with all projects conducted at such a station; moreover, it is felt that this method of operation will be most economical.

The Navy has supported the project since its inception both with material and personnel and has assigned personnel to duty with the Air Force. In addition, the Bureau of Yards and Docks of the Navy Department is presently engaged in making engineering studies and designs leading to the construction of all off-shore facilities.

The proposed legislation, as submitted to the Speaker of the House of Representatives and the chairman of the Committee on Armed Services, would have authorized a total expenditure of $200,000,000 which contemplates the eventual cost of the project. Testimony was received, however, to the effect that the first phase, representing the minimum requirements to begin operations, will require an estimated expenditure of at least $70,000,000 over a period of approximately three years. A figure of $60,000,000 was mentioned during consideration of the bill in open session by the subcommittee. This estimate, however, relates to technical requirements only and does not include the minimum requirements for housing and necessary community facilities. A complete break-down of costs furnished to the subcommittee in executive session fully supports the estimated figure of $70,000,000 needed.

Testimony further disclosed the fact that no accurate estimate can be made at this time as to the ultimate cost of construction which may be required during later phases of the long-range guided missiles project; the ceiling of $200,000,000 in the bill submitted by the National Military Establishment appears to have been merely an arbitrary figure selected at the request of the Bureau of the Budget. In view of these circumstances the committee believes it appropriate to limit the authorization to the amount which will be required for the initial phase of the project. In setting such a figure, however, it is imperative that a reasonable margin of safety be allowed to provide for contingencies in order to insure that there will be no fiscal obstacles to the effective development of this vitally important facility. Taking into consideration the difficulty of estimating the exact cost of construction of certain highly technical elements and the possibility of fluctuating construction costs, the committee believes it appropriate at this time to fix the total authorization for the project in phase one at $75,000,000 and the bill has been amended accordingly.

That the proposed legislation has the approval of the Secretary of Defense and the Secretary of the Air Force is manifest from the letters which will be made a part of the report. The approval of the Departments of the Army and Navy is apparent from the testimony of the representatives of those two services in the record of hearings before the subcommittee.

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Mr. Chairman, that is the report. And, as I say, the committee proved the bill.

I move, sir, that the committee report be accepted.

The CHAIRMAN. Thank you very much, Mr. Brooks.

Mr. BROOKS. Together with the two amendments, Mr. Chairman: e reducing the amount to $75,000,000; and the other one, on page ines 19 and 20, to strike everything after the word "reallocate" and ert in lieu thereof the following:

he Secretary of the Army, the Secretary of the Navy, or the Secretary of the Force, all, or * * *.

The CHAIRMAN. Thank you very much, Mr. Brooks.

And I want to congratulate the subcommittee on having brought ut a reduction of $125,000,000.

Now, members of the committee, I think the proper procedure uld be to have the clerk read the bill in its entirety and then to ve the amendments offered. And if there are any questions that y members want to address to Mr. Brooks, why, have no hesitancy asking him any questions.

Read the bill.

Mr. HARPER. H. R.——

The CHAIRMAN. Let Mr. Brown read the bill.

Mr. HARPER. Yes, sir.

Mr. BROWN (reading):

H. R. 1741

ILL to authorize the establishment of a joint long-range proving ground for guided missiles, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of erica in Congress assembled, That the Secretary of the Air Force is hereby thorized to establish a joint long-range proving ground for guided missiles and ier weapons by the construction, installation, or equipment of temporary or rmanent public works, including buildings, facilities, appurtenances, and ilities, within or without the continental limits of the United States, for scien- ic study, testing, and training purposes by the Departments of the Army, Navy, d air Force.

That is all of section 1.

Mr. JOHNSON. Mr. Chairman, may I ask a question, sir?

The CHAIRMAN. Yes, sir.

Mr. JOHNSON. I would like to ask the subcommittee chairman hether the phrase "without the continental limits of the United ates" should include foreign territory like Japan and Korea?

Mr. BROOKS. It would include any place in the whole world, where uitable arrangements were made locally, of course.

Mr. JOHNSON. All right.

The CHAIRMAN. Go ahead.

Mr. BROWN (reading):

SEC. 2. The Secretary of the Air Force is authorized in discharging the authority ven in the preceding section to make surveys, to acquire lands and rights or other terests pertaining thereto, including the temporary use thereof, by donation, urchase, exchange of Government-owned lands, or otherwise, without regard to ction 3648, Revised Statutes, as amended, in administering the provisions of the ct of July 9, 1942, 956 Stat. 654, 43 U. S. C., Supp. 315q).

The CHAIRMAN. I would like to ask the subcommittee chairman hat section 3648 does?

Mr. BROOKS. Mr. Brown, we covered that. Would you mind xplaining that.

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Mr. BROWN. Yes, sir.

Mr. Chairman, that is the section that provides that no advanced payments shall be made unless specifically approved by the Congress, I believe. It relates to advance payments for real estate——

The CHAIRMAN. I see.

Then, there will be advance payments made?

Mr. BROWN. Yes, sir.

Mr. RIVERS. And that was done, Mr. Chairman—if you will pardon me—so as not to impede the immediate beginning of this.

The CHAIRMAN. Yes. Read section 3, then.

Mr. BROWN (reading):

SEC. 3. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, not to exceed $200,000,000 to carry out the purposes of sections 1 and 2 of this Act.

Mr. BROOKS. Mr. Chairman, that is where the committee voted to reduce the amount to $75,000,000.

The CHAIRMAN. All right. The amendment is offered by the gentleman from Louisiana, Mr. Brooks, to strike out $200,000,000 and substitute in lieu thereof $75,000,000.

Without objection, the amendment is temporarily agreed to.

Mr. ARENDS. May I ask the chairman a question?

The CHAIRMAN. Yes.

Mr. ARENDS. Was this considered in the budget this year, or is this an authorization for additional and altogether new funds?

Mr. BROOKS. That part of the money which will be needed during the coming fiscal year—about 25 million, I believe—is already included in the budget estimates for fiscal year 1950.

Mr. ARENDS. It is in the budget?

Mr. BROOKS. Yes. And although the balance of the money will not be carried in this year's appropriation, the authorization bill providing for an ultimate expenditure of $200,000,000 was cleared by the Bureau of the Budget.

Now, the services are satisfied with the amount of $75,000,000 to which the committee has reduced the original figure. They feel that they can do the job for the next 3 years. So by this reduction there will be no impediment placed in the way of the development of guided missiles projects.

Mr. ARENDS. O. K.

The CHAIRMAN. Section 4.

Mr. BROWN (reading):

SEC. 4. The Secretaries of the Army, the Navy, and the Air Force are hereby authorized to contribute to the support of the joint long-range proving ground for guided missiles and other weapons to the extent they may deem necessary or advisable, including, but not limited to, the allocation for such support of funds available to them for such purposes.

The CHAIRMAN. Read section 5.

Mr. BROWN (reading):

SEC. 5. The Secretary of Defense may, at his discretion, transfer and reallocate to any department, board, or agency within the National Military Establishment all, or any part of, the authority granted herein, and, in connection with such transfer or reallocation, may transfer all or any part of the funds available for the establishment or support of the joint long-range proving ground for guided missiles and other weapons.

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Mr. BROOKS. Now, Mr. Chairman, there is one amendment there. n page 2, lines 19 and 20, strike out everything after the word allocate" and insert in lieu thereof the following:

* * * to the Secretary of the Army, the Secretary of the Navy, or the retary of the Air Force, all, or * * *.

The CHAIRMAN. Without objection, the amendment suggested by e gentleman from Louisiana, Mr. Brooks, is temporarily agreed to.
Mr. SHORT. Mr. Chairman.
The CHAIRMAN. Mr. Short.
Mr. SHORT. Might I ask the subcommittee chairman if the ordnance anch in the Department of the Army has any objection to this bill?
Mr. BROOKS. There is no objection by anyone, Mr. Short, to the bill.
Mr. SHORT. They are all agreed?
Mr. BROOKS. They are all agreed to it. It is an interdepartmental atter. All services want it, and feel the need of a joint proving ound.
The CHAIRMAN. I would like to ask the clerk: Have the hearings en printed?
Mr. BROWN. Yes, sir.
The CHAIRMAN. And the hearings have been before the committee w many days?
Mr. BROWN. Since last Saturday, sir.
The CHAIRMAN. Then that complies with the rule.
Have the hearings been sent to all the members of the committee?
Mr. BROWN. Yes, sir.
The CHAIRMAN. Now, members of the committee, what is your easure on reporting the bill as amended?
Mr. VAN ZANDT. Mr. Chairman, may I ask a question?
The CHAIRMAN. Yes.
Mr. VAN ZANDT. I am wondering whether the subcommittee looked to the matter of whether the construction will be permanent or mporary at this base?
I am thinking about what is taking place in the field of guided issiles. It may be that the base they are going to establish here ay be obsolete. I wonder whether the construction will be permanent temporary?
Mr. BROOKS. Mr. Van Zandt, the committee did carefully analyze ie construction of every phase of the work. I would say that it is oing to be permanent construction. We analyzed every feature of it. 'e made a break-down. I think we were most careful, in executive ession, to cover everything. A large part of it, of course, is scientific istruments. Perhaps I might say that will account for the better art of the amount to be expended. That, of course, is difficult o analyze.
Mr. RIVERS. If the chairman will yield, it was brought out in the earing in executive session that in the event that present plans were hanged at a later date because of progress in the field of guided issiles, the site where the range is to be constructed would not be endered obsolete and could still be utilized.
The CHAIRMAN. Now, call the roll, if there are no further questions. And when your name is called, all in favor of passing the bill as mended vote "aye," and all opposed vote "no."
(Roll call.)

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Mr. HARPER. Twenty-five "ayes"; none opposed.

The CHAIRMAN. The bill is unanimously reported. And Mr. Brooks, the chairman of the subcommittee, will report the bill and prepare a resolution for a rule and submit it. And you will notify Mr. Short when you appear before the Rules Committee asking for a rule. I suggest that you try to have these rules up during the week beginning March 7.

Any further report from your subcommittee, Mr. Brooks?

Mr. BROOKS. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Durham, of Subcommittee No. 3, have you anything to report?

Mr. DURHAM. Mr. Chairman, we have a report on H. R. 2546, which is recommended to the committee unanimously by Subcommittee No. 3.

(H. R. 2546 is as follows:)

[H. R. 2546, 81st Cong., 1st sess.]

A BILL To authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Air Force is hereby authorized to establish and develop within and without the continental limits of the United States in fulfilling the air defense responsibilities of the Department of the Air Force such land-based air warning and control installations and facilities, by the construction, installation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, utilities and access roads, and to provide for necessary administration and planning therefor, without regard to sections 1136, 3648, 3734, Revised Statutes, as he may deem necessary in the interest of national security.

SEC. 2. In furtherance of the above, the Secretary of the Air Force is authorized to make surveys and to acquire lands and rights pertaining thereto or other interests therein, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, and to place permanent and temporary improvements thereon whether such lands are held in fee or under lease, or under other temporary tenure.

SEC. 3. There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act, and when so specified in an appropriation Act such amounts shall remain available until expended.

Mr. DURHAM. Open hearings were held on this bill, and also much of the information was received in executive session.

In lieu of the report, I will read a statement which fully explains the bill. If you will listen carefully I think you can get it from this statement.

The purpose of the proposed legislation is to authorize the Secretary of the Air Force to establish a system of land-based aircraft warning and control facilities for the defense of the United States against attack by enemy aircraft.

Although specific and highly important air defense responsibilities are assigned to all three services, the United States Air Force is charged with responsibility for defense of the United States against air attack.

The system of land-based air warning and control installations and facilities which would be authorized by the proposed legislation is but one element of an effective system of air defense; it is, however, the indispensable element without which there can be no effective defense at all against approaching hostile aircraft.

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At the outset, it should be borne in mind that an aircraft warning and control system, as its name implies, is more than a mere device for providing early warning in order to afford the civilian population a sufficient opportunity to seek shelter; on the contrary its most important function is the detection of enemy aircraft in sufficient time to permit fighter aircraft to intercept and destroy them before they have reached their targets.

A warning and control system without fighter aircraft and antiaircraft artillery would be of only slight value; but without such a system there is no conceivable manner in which either fighter planes or antiaircraft batteries can be alerted in sufficient time to permit effective defensive action.

The mere momentary detection of enemy aircraft passing a given point, while providing some degree of early warning, is not in itself sufficient for purposes of effective defense because it does not always disclose the ultimate target destination of the enemy planes, nor does it reveal where they will be at any moment between the time they are so detected and their time of arrival over the target. Without this knowledge, it would be impossible to guide fighter aircraft to a point where effective interception can be accomplished during this interim period between initial detection and arrival over target.

To accomplish the effective control and direction of interceptor aircraft, therefore, it is essential that hostile aircraft be continually tracked, once they have been detected, so that their precise location at any instant thereafter may be known.

The detection and tracking of enemy planes and the direction of our own fighters to an interception will be accomplished by radar, as was done both on land and at sea during World War II and notably during the Battle of Britain.

Radar has certain technical limitations, one of which is its inability to "see" around the horizon. Thus, although radar equipments now exist which are sufficiently powerful to transmit signals to the moon, there is no way in which a radar beam can be directed to a point around the horizon which is not in the line of sight from the transmitter. It is this feature which makes approach at low altitudes possible to elude detection by radar; the approaching aircraft merely fly in below the radar beam. Conversely, the greater the altitude of the oncoming plane the greater the range at which it can be detected.

The limitation described above reduces the effective range of a single radar installation, for all practical purposes, to a maximum of about 150 miles. This presupposes that approaching bombers will be coming in at high altitudes; to provide for low-flying planes attempting to elude radar detection it will be necessary to rely upon supplemental methods such as the use of visual spotters on the ground.

Notwithstanding its limitations, a radar warning and control system is the only reasonably effective means known today whereby the effectiveness of an enemy air attack may be reduced. No claim is made, however, that such a system is capable of thwarting an attack completely. It is impossible to achieve absolute security and there is no method whereby an impenetrable ring or barrier may be thrown up around the United States; the use of the phrase "radar fence" is misleading and unfortunate. Some of the hostile aircraft are bound

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to elude the interceptors and may reach their assigned targets. The problem is one of degree, the object being to exact such a toll of enemy aircraft that a hostile power will come to realize that his attrition rate is so high as to make continued attacks upon our vital centers not only unprofitable but a dangerous drain upon his own resources.

The foregoing, in essence, is what was accomplished in the Battle of Britain. The air defense forces of Britain did not win the war nor did they achieve the total destruction of the Luftwaffe. What they did accomplish, however, was to convince the German High Command that the continuance of their offensive would result in a disastrous drain upon their own economy. The Battle of Britain did not win the war against Germany; had it been lost, however, it is probable that Britain would have lost the war.

The air warning and control system to be established pursuant to the authority contained in this bill is considered to be so vital as a defensive measure in the interests of national security that specific authority is being sought, apart from the usual public-works program, for the construction of the necessary installations and facilities. A total construction program amounting to $85,500,000 is involved. This sum applies only to the cost of construction of buildings, facilities, utilities, and so forth, and does not include the acquisition cost of real estate nor the cost of radar and communications equipment. Neither does it include an item of $7,000,000 representing the cost of conversion to, and equipment of, four radar picket vessels which are to be provided by the Navy under the program. These four vessels are to be used to provide radar coverage over sea approaches in localities where the proximity of vital targets to the coast line precludes the deployment of land-based radar installations sufficiently far out to permit warning and interception of enemy planes in sufficient time. Funds for these vessels were requested but have been deleted from current budget estimates.

After several years of study a definite plan and program for the establishment of an aircraft warning and control system in the United States and Alaska has now been finalized by the Air Force and reviewed and approached by the Joint Chiefs of Staff and the Secretary of Defense.

This program, which is considered to be the minimum acceptable from a military point of view, is believed to be economically feasible and will provide the United States with a modest degree of protection which would otherwise be wholly nonexistent.

It will require a considerable time to install, perfect, and make operational this system. This element of lead time is of the utmost importance and must be given serious consideration in order that the United States may be provided an adequate system of air defense within a reasonable length of time in the future. The achievement of an operational system in being requires more than the mere construction of buildings and physical facilities and equipment. More important still, it requires extensive training over a long period of time of large numbers of technical and operating personnel without whom such a system cannot possibly be operational.

The over-all cost of the construction to be authorized by this bill is estimated at $85,500,000; this figure does not include the cost of radar and communications equipment. New radar and communica-

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tions equipment to be provided will cost an additional $26,000,000 which is not included in the authorization sought herein inasmuch as authority already exists for the procurement of equipment of this type. Existing radar equipment remaining in surplus from World War II and valued at $42,250,000 will also be allocated for use in the system.

The over-all cost of the entire program as planned includes the foregoing figures and, in addition, the previously mentioned item of $7,000,000 for four picket vessels, making an over-all total cost of about $161,000,000, exclusive of personnel costs. Deducting from this figure the value of existing radar and other equipment already bought and paid for, and deducting also the cost of the picket vessels inasmuch as funds for these have been deleted from current budget estimates, there remains the sum of about $112,000,000 for which new funds must be requested by the Air Force in order to complete the entire program. As already indicated, however, the fiscal effect of the authorization contained in this bill amounts only to $85,500,000.

The proposed program for air defense has been approved by the Joint Chiefs of Staff and by the Secretary of Defense. It is vigorously supported by the Army and Navy whose representatives have testified that the air-defense forces of these two services cannot be utilized to their maximum effectiveness except in conjunction with the system of land-based air warning and control installations which this bill would authorize.

The subcommittee unanimously recommends that the bill be favorably reported to the House with the following amendment: Page 2, following line 17, add a new section to read as follows——

The CHAIRMAN. Now, wait one moment, Mr. Durham. Let us read the bill, and we will get to the amendment.

Mr. DURHAM. Mr. Chairman, that completes it. I may say there are a lot of questions in this that are classified.

The CHAIRMAN. How much is it estimated it will cost? Eighty-five million dollars?

Mr. DURHAM. For the construction to be authorized by this bill, yes, sir.

The CHAIRMAN. No money is set up in the budget for it; this is merely an authorization?

Mr. DURHAM. The Bureau of the Budget interposes no objection. I don't believe that item is in the budget. Is that correct, Mr. Brown?

Mr. BROWN. That is correct.

Mr. KILDAY. Is there any agreement with the Government of Mexico?

Mr. DURHAM. Not as far as I know.

The CHAIRMAN. Any questions of Mr. Durham from any members of the committee?

Mr. KILDAY. I would like to ask this, Mr. Chairman.

As I understood you, radar is effective only for 150 miles?

Mr. DURHAM. That is correct.

Mr. KILDAY. Taking the present B–36, that would give you 30 minutes' warning, and with the development of the B–47's you would expect about a 15-minute warning, if its speed increases to somewhere in the neighborhood of 600 miles an hour.

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The CHAIRMAN. But, you see, Mr. Kilday——

Mr. KILDAY. I was wondering why the Bureau of the Budget eliminated these ships, which seem to me to be the most important part of it. If you are only going to have 15 minutes' warning you can put the ships out two or three hundred miles and have that much more warning.

Mr. DURHAM. Mr. Chairman, I think that can be worked out. These ships are already at the present time provided for. It is just a question of their putting this equipment that we already have on these picket vessels.

Mr. KILDAY. There would be adequate authority without this legislation to equip the picket vessels?

Mr. DURHAM. That is correct.

Mr. KILDAY. It seems to me the picket vessels are the most important part of the program.

Mr. SHORT. This $85,500,000 does not include the cost of radar equipment?

Mr. DURHAM. What is the question?

Mr. SHORT. The cost of radar equipment is not included?

Mr. DURHAM. We already have on hand about $42,000,000 worth of material that we are not using.

Of course, there are many things in this thing, especially as to the Alaskan set-up, that are rather confidential.

Mr. ARENDS. There has been no appreciable improvement in radar equipment since the war, so they could successfully use what they have on hand.

The CHAIRMAN. Well, let us read the bill.

Mr. ELSTON. Mr. Chairman, before we get to that I wonder if it shouldn't be made clear as to why no specific amount is mentioned in the authorization section, as was done in H. R. 1741. As it is, the Appropriations Committee has virtually unlimited authority to go ahead and appropriate whatever they see fit in the future.

The CHAIRMAN. In other words, you think there should be put in the bill: "Not exceeding a total cost of $85,500,000."

Mr. ELSTON. Whatever the amount is.

The CHAIRMAN. Of course, the gentleman is correct. The Appropriations Committee could spend whatever they wanted to. Therefore, this committee loses control over the amount of the authorization

I imagine the reason why they didn't put it in there is due to the fact that they had not determined exactly how much would have to be asked for to install it. For that reason they were willing to leave it to the Appropriations Committee to develop the figures later.

I think probably we might hamstring it if we try to limit it in this bill to any particular amount. It may cost $85,000,000, and it may not cost $85,000,000. Or it may cost a great deal more. I think we might be on safer ground to let that go to the Appropriations Committee unless we are positive that it is not going to cost but a certain amount.

Mr. ELSTON. I am not objecting to it, but as a general policy I don't believe we should divest ourselves of authority—authorizing authority—and turn it over to the Appropriations Committee. We would really have nothing more to say about this program. It would be entirely up to the Appropriations Committee from now on.

The CHAIRMAN. But the report will show that we estimate the over-all cost at $85,000,000. So when anyone on the floor of the House

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ks what it is going to cost, we can say that the information before now is that it would not be over $85,000,000, or whatever the ure was.

Mr. DURHAM. Eighty-five million.

Mr. BROWN. That is for construction. And that is all the bill thorizes, because the radar equipment is not covered since they ready have authority to buy that. Hence they do not need any thority in this bill to buy radar.

Mr. DURHAM. Now, there is no family housing in this. This is nstruction for operating units entirely.

Mr. VAN ZANDT. Mr. Chairman.

The CHAIRMAN. Mr. Van Zandt.

Mr. VAN ZANDT. Did the subcommittee get an estimate of the cost manning this equipment, maintaining it, and keeping it modernized?

Mr. DURHAM. The Air Force did not give us the exact cost of operaon.

Mr. BROWN. They gave us the annual cost of maintenance and eration, Mr. Chairman.

Mr. DURHAM. We have the information as to how many men it kes to operate a unit like this. It is classified——

Mr. VAN ZANDT. I am principally concerned with the problem of odernization. Anyone who knows radar equipment knows how st it becomes obsolescent.

The CHAIRMAN. And for that very reason you better not put in ie bill any specific amount because there are constant changes.

Now, read the bill.

Mr. BROWN (reading):

H. R. 2546

BILL To authorize the Secretary of the Air Force to establish land-based air warning and control installations for the national security, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of merica in Congress assembled, That the Secretary of the Air Force is hereby uthorized to establish and develop within and without the continental limits f the United States in fulfilling the air defense responsibilities of the Department f the Air Force such land-based air warning and control installations and facilies, by the construction, installation, or equipment of temporary or permanent ublic works, including buildings, facilities, appurtenances, utilities, and access oads, and to provide for necessary administration and planning therefor, without egard to sections 1136, 3648, 3734, Revised Statutes, as he may deem necessary n the interest of national security.

The CHAIRMAN. Any amendments to section 1?

All right, read section 2.

Mr. BROWN (reading):

SEC. 2. In furtherance of the above, the Secretary of the Air Force is authorized o make surveys and to acquire lands and rights pertaining thereto or other interests therein, including the temporary use thereof, by donation, purchase, exchange of Government-owned lands, or otherwise, and to place permanent and temporary mprovements thereon whether such lands are held in fee or under lease, or under other temporary tenure.

The CHAIRMAN. Any amendments, Mr. Durham, to section 2?

Mr. DURHAM. No amendments.

The CHAIRMAN. All right.

Mr. BROWN (reading):

SEC. 3. There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act, and when so specified in an appropriation Act such amounts shall remain available until expended.

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Mr. DURHAM. On page 2, following line 17, add a new section to read as follows:

SEC. 4. The provisions of this Act shall be subject to the duties and authority of the Secretary of Defense and the departments and agencies of the National Military Establishment as provided in the National Security Act of 1947 (Public Law 253, Eightieth Congress).

That is the same provision that is being placed in all of these bills.

The CHAIRMAN. Without objection, the amendment is temporarily agreed to.

Mr. GAVIN. Mr. Chairman, a question.

The CHAIRMAN. Yes, sir.

Mr. GAVIN. Would this permit the installation of radar equipment at all our military installations now for GCA landings?

The CHAIRMAN. This would let the Administration put radar equipment where necessary.

Mr. GAVIN. I think it is very important.

The CHAIRMAN. It permits the Administration to put them wherever they think is necessary.

Mr. VAN ZANDT. Mr. Chairman, I do not think this involves GCA. This involves the detection of the approach of enemy aircraft.

The CHAIRMAN. It does this: It leaves the discretion in the hands of the military authorities as to where is the proper place to put the radar equipment. They have that discretion. They know where they contemplate putting these facilities.

Mr. JOHNSON. With due respect to your opinion, it seems to me the title doesn't include that—GCA landings—because it says: "to establish land-based air-warning and control installations."

Mr. NORBLAD. They have that authority now.

Mr. JOHNSON. Maybe they have that in some other law.

You could carve this whole fund away and not fulfill the purpose stated in this title if you installed GCA equipment under this bill.

Mr. ELSTON. GCA is already authorized, is it not?

Mr. JOHNSON. That is what I understood.

Mr. GAVIN. I would like to know where it is, because we only found it in one or two of the places we visited. And it certainly came in handy at the time.

Now, I am of the opinion that we ought to have GCA landings at all of our installations. I think it is very important. That is why I am bringing the question up here. What is the situation? Can anybody tell us whether the National Military Establishment is authorized——

Mr. SHORT. They have that power now.

Mr. GAVIN. They do?

Mr. SHORT. Yes.

Mr. DURHAM. They have that authority.

The CHAIRMAN. I am informed by Mr. Brown that GCA does not have any relation to this bill. I thought you had reference to the discretion in the hands of the military authorities as to the proper location of these air-warning and control facilities. Of course, they have the discretion to put the installations anywhere they see fit to put them.

Mr. KILDAY. Mr. Chairman, I think I agree with the gentleman from Ohio about not leaving the bill as it is. We will never hear another thing about a warning system if the bill is passed as it is now.

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The appropriations people will be the only people in Congress having anything to do with it. Their sessions will be executive. I do not like the idea of turning over blanket authority from this committee. We are charged with the establishment of the policy. And when you report out a bill here with no limitation on costs, we will never hear of it again. That will be the last we ever hear of it.

The CHAIRMAN. Well, if you obtain an accurate figure, why, of course, it would be preferable to do so. But have we a sufficiently accurate figure available?

Mr. DURHAM. I do not see any objection to putting in a limitation here.

The CHAIRMAN. All right. How much?

Mr. DURHAM. We will have to get these figures correct.

Mr. BROWN. Well, the cost of the entire program is going to be approximately $161,000,000. However, about $42,000,000 of that is old radar equipment which we now have, and which has already been bought and paid for. That brings it down to about $119,000,000. Well, then, there is $7,000,000 for the Navy picket vessels, which is not included in the budget, and which the Navy would come in and ask for independently of the Air Force. That would not come under this authorization because this is an authorization for the Secretary of the Air Force. You take that out and that brings it down to $112,000,000.

Now, that $112,000,000 consists of the $85,500,000 for the construction of the buildings, facilities, utilities, and all that sort of thing, where this radar equipment is going to be installed. That is mainly what this bill is designed to authorize. It is for that necessary construction. The other part of the new item of $112,000,000 consists of about $26,000,000 for new radar and communications equipment. It is understood that the authority to purchase and procure that kind of equipment already exists independently of this bill.

The principal purpose of this bill being to authorize the construction, it might be safe to put in the figure of $85,500,000—or something slightly above that, to afford a margin of safety—unless it were construed that this bill should do more than authorize merely the construction.

The CHAIRMAN. Not exceeding $85,500,000 for construction. And that means not the equipment, but the establishment of the facilities.

Mr. BROWN. Yes, sir.

The CHAIRMAN. If it were drafted along that line, and if it is the understanding of the committee that it does not include the radar equipment at all but merely includes construction of the necessary public works at these various places at a cost of not to exceed $85,500,000, why, of course, that is a far better way to legislate.

Mr. BROWN. Yes, sir.

Mr. DURHAM. Some of these stations are already in operation at the present time.

The CHAIRMAN. Is there any objection to the bill being amended, by placing a top ceiling on the construction of these installations of not to exceed $85,500,000?

If not, then the clerk is instructed to prepare an amendment to that effect.

Now, are there any further questions of Mr. Durham?

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If not, let the clerk call the roll. And all in favor of reporting the bill as amended vote "aye" and all opposed vote "no."

(Roll call.)

Mr. HARPER. Twenty-four "ayes" and no "nays."

The CHAIRMAN. The bill is unanimously reported by the Armed Services Committee. And I respectfully request Mr. Durham to file a resolution for a rule and notify Mr. Short. If Mr. Short is absent, notify Mr. Arends. If he is absent, notify Mr. Cole. Let us try to file the report today. And I suggest we try to have this bill up during the week beginning March 7. Make arrangements with the House leadership.

Now, have the hearings been printed?

Mr. BROWN. Yes, sir.

The CHAIRMAN. And they were all sent to the members of the committee?

Mr. BROWN. Yes, sir.

The CHAIRMAN. I wrote them all a letter about the bill and sent them a copy of the statement.

The CHAIRMAN. Now, Mr. Durham, anything else?

Mr. DURHAM. I will yield to Mr. Sasscer.

Mr. SASSCER. Mr. Chairman, Subcommittee No. 3 held hearings on H. R. 2663, which is a bill to provide for the administration of the Central Intelligence Agency, established pursuant to section 102, National Security Act of 1947, and for other purposes.

(H. R. 2663 is as follows:)

[H. R. 2663, 81st Cong., 1st sess.]

A BILL To provide for the administration of the Central Intelligence Agency, established pursuant to section 102, National Security Act of 1947, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. That when used in this Act, the term—

(a) "Agency" means the Central Intelligence Agency;

(b) "Director" means the Director of Central Intelligence;

(c) "Government agency" means any executive department, commission, council, independent establishment, corporation wholly or partly owned by the United States which is an instrumentality of the United States, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the Government; and

(d) "Continental United States" means the States and the District of Columbia.

SEAL OF OFFICE

SEC. 2. The Director of Central Intelligence shall cause a seal of office to be made for the Central Intelligence Agency, of such design as the President shall approve, and judicial notice shall be taken thereof.

PROCUREMENT AUTHORITIES

SEC. 3. (a) In the performance of its functions the Central Intelligence Agency is authorized to exercise the authorities contained in sections 2 (c) (1), (2), (3), (4), (5), (6), (10), (12), (15), (17), and sections 3, 4, 5, 6, and 10 of the Armed Services Procurement Act of 1947 (Public Law 413, Eightieth Congress, second session).

(b) In the exercise of the authorities granted in subsection (a) of this section, the term "Agency head" shall mean the Director, the Deputy Director, or the Executive of the Agency.

(c) The determinations and decisions provided in subsection (a) of this section to be made by the Agency head may be made with respect to individual purchases

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contracts or with respect to classes of purchases or contracts, and shall be
l. Except as provided in subsection (d) of this section, the Agency head is
horized to delegate his powers provided in this section, including the making
uch determinations and decisions, in his discretion and subject to his direction,
ny other officer or officers or officials of the Agency.
l) The power of the Agency head to make the determinations or decisions
ified in paragraphs (12) and (15) of section 2 (c) and section 5 (a) of the
ied Services Procurement Act of 1947 shall not be delegable. Each deter-
ation or decision required by paragraphs (12) and (15) of section 2 (c), by
ion 4 or by section 5 (a) of the Armed Services Procurement Act of 1947,
l be based upon written findings made by the official making such deter-
ations, which findings shall be final and shall be available within the Agency
a period of at least six years following the date of the determination.

EDUCATION AND TRAINING

EC. 4. (a) Any officer or employee of the Agency may be assigned or detailed
special instruction, research or training, at or with domestic or foreign public
rivate institutions; trade, labor, agricultural, or scientific associations; courses
raining programs under the National Military Establishment; or commercial
is.
b) The Agency shall, under such regulations as the Director may prescribe,
the tuition and other expenses of officers and employees of the Agency assigned
detailed in accordance with provisions of subsection (a) of this section, in
lition to the pay and allowances to which such officers and employees may
otherwise entitled.

TRAVEL, ALLOWANCES, AND RELATED EXPENSES

EC. 5. (a) Under such regulations as the Director may prescribe, the Agency,
h respect to its officers and employees assigned to permanent-duty stations
tside the continental United States, its territories, and possessions, shall—

(1) (A) pay the travel expenses of officers and employees of the Agency including expenses incurred while traveling pursuant to orders issued by the Director in accordance with the provisions of section 5 (a) (3) with regard to the granting of home leave;

(B) pay the travel expenses of members of the family of an officer or employee of the Agency when proceeding to or returning from his post of duty; accompanying him on authorized home leave; or otherwise traveling in accordance with authority granted pursuant to the terms of this or any other Act;

(C) pay the cost of transporting the furniture and household and personal effects of an officer or employee of the Agency to his successive posts of duty and, on the termination of his services, to his residence at time of appointment or to a point not more distant, or, upon retirement, to the place where he will reside;

(D) pay the cost of storing the furniture and household and personal effects of an officer or employee of the Agency who is absent under orders from his usual post of duty, or who is assigned to a post to which, because of emergency conditions, he cannot take or at which he is unable to use, his furniture and household and personal effects;

(E) pay the cost of storing the furniture and household and personal effects of an officer or employee of the Agency on first arrival at a post for a period not in excess of three months after such first arrival at such post or until the establishment of residence quarters, whichever shall be shorter;

(F) pay the travel expenses and transportation costs incident to the removal of the members of the family of an officer or employee of the Agency and his furniture and household and personal effects, including automobiles, from a post at which, because of the prevalence of disturbed conditions, there is imminent danger to life and property, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned.

(2) Charge expenses in connection with travel of personnel, their dependents, and transportation of their household goods and personal effects, involving a change of permanent station, to the appropriation for the fiscal year current when any part of either the travel or transportation pertaining to the transfer begins pursuant to previously issued travel and transfer orders,

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notwithstanding the fact that such travel or transportation may not all be effected during such fiscal year, or the travel and transfer orders may have been issued during the prior fiscal year.

(3) Order to the continental United States on leave provided for in Fifth United States Code, 30, 30a, 30b, or as such sections may hereafter be amended, every officer and employee of the agency who was a resident of the United States at time of employment, upon completion of two years' continuous service abroad, or as soon as possible thereafter: *Provided*, That such officer or employee has accrued to his credit at the time of such order, annual leave sufficient to carry him in a pay status while in the United States for at least a thirty-day period.

(A) While in the continental United States on leave, the service of any officer or employee shall be available for work or duties in the agency or elsewhere, but the time of such work or duties shall not be counted as leave.

(B) Where an officer or employee on leave returns to the continental United States, leave of absence granted shall be exclusive of the time actually and necessarily occupied in going to and from the continental United States, and such time as may be necessarily occupied in awaiting transportation.

(4) Notwithstanding the provisions of any other law, transport for or on behalf of an officer or employee of the Agency, a privately owned automobile in any case where the Agency head shall determine that water, rail, or air transportation of the automobile is necessary or expedient for any part or of all the distance between points of origin and destination.

(5) (A) In the event of illness or injury requiring the hospitalization of an officer or employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred while on assignment abroad, in a locality where there does not exist a suitable hospital or clinic, pay the travel expenses of such officer or employee by whatever means he shall deem appropriate and without regard to the Standardized Government Travel Regulations and section 10 of the Act of March 3, 1933 (47 Stat. 1516; 5 U. S. C. 73b), to the nearest locality where a suitable hospital or clinic exists and on his recovery pay for the travel expenses of his return to his post of duty. If the officer or employee is too ill to travel unattended, the Director may also pay the travel expenses of an attendant.

(B) Establish a first-aid station and provide for the services of a nurse at a post at which, in his opinion, sufficient personnel is employed to warrant such a station: *Provided*, That, in his opinion, it is not feasible to utilize an existing facility;

(C) In the event of illness or injury requiring hospitalization of an officer or employee of the Agency, not the result of vicious habits, intemperance, or misconduct on his part, incurred in the line of duty while such person is assigned abroad, pay for the cost of the treatment of such illness or injury at a suitable hospital or clinic;

(D) Provide for the periodic physical examination of officers and employees of the Agency and for the cost of administering inoculations or vaccinations to such officers or employees.

(6) Pay the cost of preparing and transporting the remains of an officer or employee of the Agency or a member of his family who may die while in travel status or abroad, to the home or official station, or to such other place as the Director may determine to be the appropriate place of interment, provided that in no case shall the expense payable be greater than the amount which would have been payable had the destination been the home or official station.

(7) Pay the costs of travel of new appointees and their dependents, and the transportation of their household goods and personal effects, from places of actual residence in foreign countries at time of appointment to places of employment and return to their actual residences at the time of appointment or a point not more distant: *Provided*, That such appointees agree in writing to remain with the United States Government for a period of not less than twelve months from the time of appointment.

Violation of this agreement for personal convenience of an employee or because of separation for misconduct will bar such return payments and, if determined by the Director or his designee to be in the best interests of the United States, any money expended by the United States on account of such travel and transportation shall be considered as a debt due by the individual concerned to the United States.

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(b) In accordance with such regulations as the President may prescribe and notwithstanding the provisions of section 1765 of the Revised Statutes (5 U. S. C. 70), the Director is authorized to grant to any officer or employee of the agency allowances in accordance with the provisions of section 901 (1) and 901 (2) of the Foreign Service Act of 1946.

GENERAL AUTHORITIES

SEC. 6. In the performance of its functions, the Central Intelligence Agency is authorized to—

(a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget, for the performance of any of the functions or activities authorized under sections 102 and 303 of the National Security Act of 1947 (Public Law 253, Eightieth Congress), and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of this Act without regard to limitations of appropriations from which transferred;

(b) Exchange funds without regard to section 3651 Revised Statutes (31 U. S. C. 543);

(c) Reimburse other Government agencies for services of personnel assigned the Agency, and such other Government agencies are hereby authorized, without regard to provisions of law to the contrary, so to assign or detail any officer or ployee for duty with the Agency;

(d) Authorize couriers designated by the Director to carry firearms when gaged in transportation of confidential documents and materials affecting the tional defense and security;

(e) Make alterations, improvements, and repairs on premises rented by the ency, and pay rent therefor without regard to limitations on expenditures ntained in the Act of June 30, 1932, as amended: *Provided*, That in each case e Director shall certify that exception from such limitations is necessary to the ccessful performance of the Agency's functions or to the security of its activities.

(f) In the interests of the security of the foreign intelligence activities of the ited States and in order further to implement the proviso of section 102 (d)) of the National Security Act of 1947 (Public Law 253, Eightieth Congress, st session) that the Director of Central Intelligence shall be responsible for otecting intelligence sources and methods from unauthorized disclosure, the ency shall be exempted from the provisions of sections 1 and 2, chapter 795 the Act of August 28, 1935 (49 Stat. 956, 957; 5 U. S. C. 654), and the provisions any other law which require the publication or disclosure of the organization, nctions, names, official titles, salaries, or numbers of personnel employed by e Agency: *Provided*, That in furtherance of this section, the Director of the ureau of the Budget shall make no reports to the Congress in connection with e Agency under section 607, title VI, chapter 212 of the Act of June 30, 1945, amended (5 U. S. C. 947 (b)).

(g) Whenever the Director and the Attorney General shall determine that the ntry of a particular alien into the United States for permanent residence is in e interest of national security or essential to the furtherance of the national telligence mission, such alien and his immediate family shall be given entry to the United States for permanent residence without regard to their inadmissiility under the immigration or any other laws and regulations, or to the failure comply with such laws and regulations: *Provided*, That the number of aliens nd members of their immediate families entering the United States under the uthority of this section shall in no case exceed one hundred in any one calendar ear.

(h) The Director is authorized to establish and fix the compensation for not nore than three positions in the professional and scientific field, within the gency, each such position being established to effectuate those scientific intelligence functions relating to national security, which require the services of specially ualified scientific or professional personnel: *Provided*, That the rates of compenation for positions established pursuant to the provisions of this section shall not e less than $10,330 per annum nor more than $15,000 per annum, and shall be ubject to the approval of the Civil Service Commission.

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APPROPRIATIONS

SEC. 7. (a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed, and rent at the seat of government and elsewhere; health-service program as authorized by law (5 U. S. C. 150); rental of news-reporting services; purchase of rental and operations of photographic, reproduction, cryptographic, duplication and printing machines, equipment and devices, and radio-receiving and radio-sending equipment and devices, including telegraph and teletype equipment; purchase, maintenance, operation, repair, and hire of passenger motor vehicles, and aircraft, and vessels of all kinds; subject to policies established by the Director, transportation of officers and employees of the Agency in Government-owned automotive equipment between their domiciles and places of employment where such personnel are engaged in work which makes such transportation necessary, and transportation in such equipment, to and from school, of children of Agency personnel who have quarters for themselves and their families at isolated stations outside the continental United States where adequate public or private transportation is not available; printing and binding; purchase, maintenance, and cleaning of firearms, including purchase, storage, and maintenance of ammunition; subject to policies established by the Director, expenses of travel in connection with, and expenses incident to attendance at meetings of professional, technical, scientific, and other similar organizations when such attendance would be a benefit in the conduct of the work of the Agency; association and library dues; payment of premiums or costs of surety bonds for officers or employees without regard to the provisions of Sixty-first Statutes, 646; Sixth United States Code 14 payment of claims pursuant to section 2672 of title 28, United States Code acquisition of necessary land and the clearing of such land; construction of buildings and facilities without regard to Thirty-sixth Statutes 699; Fortieth United States Code 259, 267; repair, rental, operation, and maintenance of buildings, utilities, facilities, and appurtenances; and

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified.

SEPARABILITY OF PROVISIONS

SEC. 8. If any provision of this Act, or the application of such provision to any person or circumstances, is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SHORT TITLE

SEC. 9. This Act may be cited as the "Central Intelligence Agency Act of 1949".

Mr. SASSCER. Briefly, Mr. Chairman, this bill is substantially the same as a bill that was reported by this committee in the last Congress and passed the Senate in the closing days of the last Congress.

As the title implies, it relates to procurement authority and the method of expenditure of funds for travel of the agency. It primarily legalizes and outlines the functions of the agency, which has been operating for sometime under a few lines in the National Security Act of 1947.

I have a prepared statement here that we can go over, and I will be glad to attempt to answer any questions the committee cares to ask.

The CHAIRMAN. This is the same bill that the committee had a very exhaustive hearing on in the last session, during the Eightieth

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Congress, when our distinguished colleague, Mr. Shafer, had charge of the bill. I sat in on practically all of the hearings and am somewhat familiar with this bill, and the purposes and objectives of it. And the committee in the last session unanimously reported the bill out, and as the gentlemen from Maryland, Mr. Sasscer, has said it passed the Senate but it was caught in the jam during the last days of the Eightieth Congress and we were unable to get it up.

Now, of course, we all recognize the purpose of this bill. Of course, there is a great deal of matter that we cannot discuss here, and we cannot discuss on the floor of the House. We will just have to tell the House they will have to accept our judgment and we cannot answer a great many questions that might be asked. We cannot have a Central Intelligence Agency if you are going to advertise it and all of its operations from the tower—what is the big building in New York?

Mr. SHORT. The Empire State——

The CHAIRMAN. The Empire State Building. So the Congress just has to go along or else not have any confidence in us.

Mr. SHORT. I think most of us will agree, Mr. Chairman, that perhaps the weakest link in our whole chain of national defense in the past has been the lack of a Central Intelligence Agency. I think there is nothing more important.

The CHAIRMAN. You are absolutely right.

Mr. SHORT. We have to build it up.

The CHAIRMAN. Now, are there any amendments you are offering?

Mr. SASSCER. I will be glad to attempt to answer questions before we get to amendments.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. I was under the impression that this was passed at the last Congress, but the question of 100 aliens is involved.

The CHAIRMAN. Yes.

Mr. RIVERS. What is that?

The CHAIRMAN. Under the provisions of this bill we permit 100 aliens to come into this country that might be barred by other statutes, but we will just have to——

Mr. SASSCER. Mr. Chairman, I will be glad to read that paragraph of the statement, if you care to, relating to the aliens.

The CHAIRMAN. That probably will be the only thing that the House will want to know a great deal about.

Mr. SASSCER. Before reading that, for the information of the committee, the high spots——

The CHAIRMAN. Let me ask you this: Do you prefer to discuss it in executive session?

Mr. KILDAY. I would ask that you discuss it——

The CHAIRMAN. We have to discuss it on the floor of the House, and that is not in executive session. We will have to recognize the fact that it has to be debated if the House wants it debated.

Mr. RIVERS. Mr. Chairman, if we should get to some point where we would want to go into executive session we might think of the words of the great American that used to serve on this committee: Ewing Thomason—"You have to trust somebody."

Mr. SASSCER. What I have to say I think I can say in open session. For the information of the committee, I will give you the high spots

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of the legislation. It deals with certain authorities, as well as travel, allowances, and related expenses for the agency personnel. Apparently up to now, that has been done without legal authority. For an agency that is as important as this Agency, naturally it is quite necessary that the functions be outlined and legislative authority to be given for the various services that they are called upon to perform.

It permits travel and allowances, on which there has been some question, which is allowed to similar citizens of the United States employed in the State Department and other agencies.

It permits the Agency to move employees and their families from zones and places where because of changed or disturbed conditions it may be dangerous for them to stay.

There is a provision in existing law that prevents any agency from spending a sum in excess of 25 percent of the rent on leased property in a given year. The testimony before the committee developed that, very frequently, due to the confidential nature or the necessity of preserving the secrecy of their functions, it may be necessary to spend more than 25 percent of the annual rent.

The bill permits the Agency to employ several scientists and fixes the pay range for those persons so employed.

In substance, as I outlined a moment ago, it is more or less outlining administrative procedure.

The committee was somewhat interested to know whether or not there would be overlap of authority or conflict between the State Department Intelligence Section and the intelligence section of the services. It developed in the committee that their functions were in different fields; and, although the information sometimes crossed, it is taken care of in a procedure somewhat similar to our Joint Chiefs of Staff, where the heads of the various departments keep in close liaison with each other and interchange information. And all of it has to be cleared through the Central Intelligence Agency.

Getting back to the 100 aliens each year, I will now read from the statement: [Reading.]

> Section 6 (g) has been renumbered section 8. This important feature of the proposed legislation provides that whenever the director and the Attorney General determine that the entry of an alien for permanent residence in the United States is essential to the furtherance of the national intelligence mission such alien and his immediate family shall be given entry into the United States without regard to such admissibility under existing laws and regulations.

The section limits this authority to 100 persons in any one year.

I call to the committee's attention that this is 100 persons, and not 100 families. And we have the additional check of having them approved by the Attorney General as well as the Director of the Central Intelligence Agency, for them to come in.

The purpose of this section is quite obvious. Its enactment will permit the Director of the Agency, acting jointly with the Attorney General, to admit into this country aliens whose intelligence potential has proven of the highest value to the national security.

The subcommittee considered this provision carefully and it felt that the purpose for which this section was drafted is of sufficient importance to the national intelligence mission to justify the granting of this unusual authority.

Mr. BROOKS. Will the gentleman yield?

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Mr. SASSCER. Yes, sir.

Mr. BROOKS. I noticed the other day they brought in those two Russians. Don't they have authority to bring them in anyway?

Mr. KILDAY. Mr. Chairman, I want to go into executive session on this bill.

The CHAIRMAN. Let the committee go into executive session.

(Whereupon, the committee went into executive session, and off the record.)

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MAR 22 '49

[No. 27]

AUTHORIZING THE APPOINTMENT OF OFFICERS ON THE ACTIVE LIST OF THE PHILIPPINE SCOUTS IN THE REGULAR ARMY, AND FOR OTHER PURPOSES (H. R. 3344). MR. RIVERS

THE SECRETARY OF DEFENSE,
Washington, March 2, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Secretary of the Army recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To authorize the appointment of officers on the active list of the Philippine Scouts in the Regular Army, and for other purposes."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Army.

Sincerely yours.,

JAMES FORRESTAL.

Hon. SAM RAYBURN,
The Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill to authorize the appointment of officers on the active list of the Philippine Scouts in the Regular Army, and for other purposes, which the Department of the Army recommends be enacted into law. The Secretary of Defense has assigned responsibility for the preparation and submission of this measure, on behalf of the National Military Establishment, to this Department.

The purpose of the proposed legislation is to integrate certain officers of the Philippine Scouts into the Regular Army. This legislation becomes necessary due to planned action affecting the status of the Philippine Scouts.

There are about 11 officers of the Philippine Scouts who are United States citizens, commissioned prior to World War II. These officers are paid, promoted, accrue retirement rights, and are administered in all respects the same as Regular Army officers. They are professional officers to the same extent as Regular Army officers; but they are not, in fact, Regular Army officers. At present, all of these officers have retirement equities varying from about 14 to 30 years. Many of them have several years of useful service ahead of them. The best interests of the service and of the individuals will be served by taking this action to integrate them into the Regular Army.

Inasmuch as the officers to be appointed under this proposed legislation will be within the authorized strength of the Army, and in view of the fact that they are now paid by the Army, the fiscal effects of this legislation will be negligible.

This report has been coordinated among the Departments in the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has been consulted and advises that there is no objection to the submission of this proposed legislation for the consideration of the Congress.

Sincerely yours,

KENNETH C. ROYALL,
Secretary of the Army.

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MAR 22 '49

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TARY OF DEFENSE,
ADVISORY COMMITTEE
FOR AERONAUTICS,
Washington, D. C.

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MAR 22 '48

[No. 28]

PROMOTE THE NATIONAL DEFENSE BY AUTHORIZING A UNITARY PLAN FOR CONSTRUCTION OF TRANSSONIC AND SUPERSONIC WIND-TUNNEL FACILITIES AND THE ESTABLISHMENT OF AN AIR ENGINEERING DEVELOPMENT CENTER (H. R. 3434). BY MR. VINSON

THE SECRETARY OF DEFENSE,
NATIONAL ADVISORY COMMITTEE
FOR AERONAUTICS,
Washington, D. C.

on. SAM RAYBURN,
Speaker, House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith draft of a bill to romote the national defense by authorizing a unitary plan for construction of transsonic and supersonic wind-tunnel facilities and the stablishment of an air engineering development center, which the ational Advisory Committee for Aeronautics and the National Military Establishment recommend be enacted into law.

Title I of the proposed legislation concerns the unitary plan for the onstruction of transsonic and supersonic wind-tunnel facilities. The urpose of this title is summarized in the attached copy of a letter, ated April 26, 1948, addressed to the Director, Bureau of the Budget, nd signed jointly by the Secretary of Defense and the Chairman of the ational Advisory Committee for Aeronautics (enclosure 1).

The purpose of title II is to confer upon the Secretary of the Air orce authority to establish an air engineering development center and o provide and operate facilities for conducting research and development, including the construction and operation of wind tunnels in nplementation of the unitary plan referred to in title I, and for the evelopment and testing of matériel and equipment contributing to he effectiveness of the Air Force. The need for this authority is set orth in attached enclosure 2.

The fiscal effect of the proposed legislation is reflected in the nclosed draft of the bill.

This proposed legislation has been coordinated with the Departments of the Army and the Navy and the Research and Development Board in accordance with procedures prescribed by the Secretary of Defense for the coordination of such matters within the National Military Establishment.

Insofar as the future handling of this proposed legislation on behalf of the National Military Establishment is concerned, the Secretary of Defense has delegated this responsibility to the Department of the Air Force.

The Bureau of the Budget has been consulted and advises that here is no objection to the submission of the proposed legislation for

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the consideration of the Congress. We feel that the urgency and importance of the proposed legislation justify expeditious action in the national interest.

Sincerely yours,

JAMES FORRESTAL,
Secretary of Defense.

(Signed) J. C. HUNSAKER,
Chairman, National Advisory Committee for Aeronautics.

Enclosure 1: Joint letter from Secretary of Defense and chairman, NACA, dated April 26, 1948.

ENCLOSURE 1

THE SECRETARY OF DEFENSE,
NATIONAL ADVISORY COMMITTEE FOR AERONAUTICS,
Washington, D. C., April 26, 1948.

Subject: Legislation to promote the national defense by authorizing the construction of supersonic wind-tunnel facilities.

THE DIRECTOR, THE BUREAU OF THE BUDGET,
Executive Office of the President, Washington 25, D. C.

DEAR SIR: There is transmitted herewith draft of proposed legislation to promote the national defense by authorizing the first steps of the unitary plan of the National Advisory Committee for Aeronautics and of the National Military Establishment for the construction of supersonic wind-tunnel facilities, including facilities for training and research at universities.

The enclosed draft would initiate the program of additional supersonic facilities for which the President made provision in his budget message of January 6, 1948 (pp. M44, M45, M57). It is also the legislation referred to in NACA letters of March 10, 1948, to the Assistant Director, Legislative Reference, Bureau of the Budget, as being required by the NACA and the National Military Establishment for carrying out portions of the programs approved by those agencies.

The relation of the part transmitted to the whole plan, and the means of coordination, are as follows:

THE UNITARY PLAN

In 1945 the military services and the NACA studied the effect of supersonic flight on the research, development, and evaluation effort required to insure leadership of the United States in the evolution of aircraft and missiles in this new speed range. The conclusions arrived at, particularly those of the NACA, the Air Force, and the guided missiles committee of the Joint Chiefs of Staff concerning wind-tunnel requirements, were available at the April 1946 meeting of the NACA where it was agreed that the recommendations of all agencies should be obtained, reconciled, and coordinated to eliminate any duplication and nonessential items, and to evolve a unitary wind-tunnel plan.

The desired coordination was effected by special panels of the NACA studying the questions in the period April 1946 to January 1947. The resulting unitary plan was approved by NACA on January 24, 1947, and was forwarded to the Joint Research and Development Board for approval of the heads of the armed services. The plan aimed at the foreseeable needs of the country in the next 10 years; it recommended allocation and operating responsibilities among the NACA, Air Force, Navy, and universities for an integrated wind-tunnel program with an estimated cost of approximately $1,100,000,000, exclusive of electric-generating and transmission facilities and personnel housing that may be required. These wind tunnels will be available for use of all interested agencies.

JUSTIFICATION

The justification for the unitary plan is a principal part of the proceedings of formulation, coordination, and review of the whole program, and therefore comprises a considerable volume of material. A digest of the principal points of justification follows:

1. The development of air war and of atomic weapons has made the air our first line of defense.

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2. The maintenance of technical supremacy in the air is essential to our national ense.
3. Speed is the most important single characteristic of military aircraft.
4. The way is open for any country to attain technical supremacy in super- ic airplanes and missiles if it is willing and able to make the effort necessary olve the problems of supersonic flight.
5. Major problems of supersonic flight are: High thrust with low fuel consump- to attain maximum speed and range, stability and control at supersonic eds, stability and control at subsonic and transonic speeds, optimum configura- s for maximum performance, automatic piloting, and aerodynamic heating.
6. An adequate program for solving these problems should provide for the ining of technical personnel, for research, and for the development and evalua- of new designs.
7. Long experience with the solution of subsonic problems and recent experience h the solution of supersonic problems provide an adequate basis for the de- mination of means for attacking the new problems and for implementing an quate program.
8. Wind tunnels provide the best means for attacking these problems. Wind nels are required tools for training, for research, and for development and luation.
9. Supersonic wind tunnels to meet the needs of these problems must satisfy hnical requirements of size, speed, air density, air temperature, air supply, aust disposal, and auxiliary equipment.
10. The technical requirements result in every case in facilities of considerable wer and cost; in some cases of great power and large cost.
11. The power and cost factors require all needs to be fully integrated so that parts of the program and all participating organizations are served with a imum number of facilities operated for maximum utilization.
12. This integration has been accomplished in the preparation of the unitary ind-tunnel program.
13. Time is an irrecoverable asset in attaining technical supremacy in the air. echnical strength in time of emergency is the sum total of advances made prior the emergency.
14. The sequence of technical effort leading to successful military airplanes id missiles is such as to require the initiation of facilities as much as 10 to 15 ars in advance of the need for weapons.
15. The United States should act now to realize the potentialities of supersonic rplanes and missiles in the national defense.

The need for this program has also been recognized by the President's Air olicy Commission and by the Congressional Aviation Policy Board.

The President's Air Policy Commission in its report of January 1, 1948 (pp. 3-94), concludes that the United States is dangerously short of equipment for search in the transonic and supersonic speed ranges and recommends "that we roceed without delay in supplementing existing laboratory equipment with the ew tunnels projected under the unitary plan in whatever order of priority and at hatever rate as will be recommended by the Research and Development Board."

The Congressional Aviation Policy Board in its report of March 1, 1948 (sec. 71, p. 14), urges the provision of adequate research and development facilities since hey are essential for continued United States aviation leadership, and recom- ends that a unified plan for transonic and supersonic research and development acilities be expedited.

ACTION OF RESEARCH AND DEVELOPMENT BOARD

The Research and Development Board has studied the unitary plan with a view o arranging the program and time schedule to stress those facilities agreed to be ssential and urgently required at the present time. Such a program might be arried out with appropriations extending over 5 years. This study is still under- ay, but the RDB, in order to expedite the final approval of certain facilities hat do not require the establishment of new stations, recommended that portion f the plan urgently needed for training research workers in the supersonic field, nd for research and development work, be forwarded for authorization and ap- ropriation.

The plan falls naturally into parts that are consistent with the relative urgency nd with the physical problems. The training function and the development unction are in serious need of wind-tunnel facilities; the training function can be atisfied and the development need can be met in part by placing facilities at xisting laboratories. Larger facilities of the plan are still under consideration; heir problems are more complex in that they require establishment of new sta-

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The plan falls naturally into parts that are consistent with the relative urgency and with the physical problems. The training function and the development function are in serious need of wind-tunnel facilities; the training function can be satisfied and the development need can be met in part by placing facilities at existing laboratories. Larger facilities of the plan are still under consideration; their problems are more complex in that they require establishment of new stations and very large amounts of electric power. Due to the urgency of the entire unitary plan and in consideration of the time factor involved in the construction of supersonic wind tunnels, it was deemed unwise to delay submission of the initial phase pending final agreement on the remainder of the plan. It is anticipated that remaining parts of the unitary plan will be forwarded to the Bureau of the Budget when approved.

INITIAL PHASE OF THE UNITARY PLAN

The initial phase of the unitary plan includes thirteen wind tunnels for university training and research, three 2-foot wind tunnels for research and development to be located at NACA Ames laboratory, NACA Langley laboratory, and Navy David W. Taylor model basin, respectively; two 4-foot tunnels for research and development to be located at NACA Ames and Langley laboratories, and necessary service facilities; at a total estimated cost of $77,000,000. The wind tunnels at Government stations will be equally available to the NACA, and to the military services and their industrial contractors for development purposes.

RECOMMENDATION

The Secretary of Defense and the National Advisory Committee for Aeronautics concur in the need for the facilities proposed in the initial phase of the unitary plan. Legislative authorization is required for implementing certain aspects of this initial phase. We join in recommending approval of the enclosed draft of legislation required to accomplish this purpose. We feel that the urgency and importance of the plan justify expeditious action in the national interest.

JAMES FORRESTAL,
Secretary of Defense.

J. C. HUNSAKER,
Chairman, National Advisory Committee for Aeronautics.

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APR 13 '49

[No. 28] [2d. ed.]

TO PROMOTE THE NATIONAL DEFENSE BY AUTHORIZING A UNITARY PLAN FOR CONSTRUCTION OF TRANSSONIC AND SUPERSONIC WIND-TUNNEL FACILITIES AND THE ESTABLISHMENT OF AN AIR ENGINEERING DEVELOPMENT CENTER (H. R. 3434). BY MR. VINSON

THE SECRETARY OF DEFENSE,
NATIONAL ADVISORY COMMITTEE
FOR AERONAUTICS,
Washington, D. C.

Hon. SAM RAYBURN,
Speaker, House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith draft of a bill to promote the national defense by authorizing a unitary plan for construction of transsonic and supersonic wind-tunnel facilities and the establishment of an air engineering development center, which the National Advisory Committee for Aeronautics and the National Military Establishment recommend be enacted into law.

Title I of the proposed legislation concerns the unitary plan for the construction of transsonic and supersonic wind-tunnel facilities. The purpose of this title is summarized in the attached copy of a letter, dated April 26, 1948, addressed to the Director, Bureau of the Budget, and signed jointly by the Secretary of Defense and the Chairman of the National Advisory Committee for Aeronautics (enclosure 1).

The purpose of title II is to confer upon the Secretary of the Air Force authority to establish an air engineering development center and to provide and operate facilities for conducting research and development, including the construction and operation of wind tunnels in implementation of the unitary plan referred to in title I, and for the development and testing of matériel and equipment contributing to the effectiveness of the Air Force. The need for this authority is set forth in attached enclosure 2.

The fiscal effect of the proposed legislation is reflected in the enclosed draft of the bill.

This proposed legislation has been coordinated with the Departments of the Army and the Navy and the Research and Development Board in accordance with procedures prescribed by the Secretary of Defense for the coordination of such matters within the National Military Establishment.

Insofar as the future handling of this proposed legislation on behalf of the National Military Establishment is concerned, the Secretary of Defense has delegated this responsibility to the Department of the Air Force.

The Bureau of the Budget has been consulted and advises that there is no objection to the submission of the proposed legislation for

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tions and very large amounts of electric power. Due to the urgency of the entire unitary plan and in consideration of the time factor involved in the construction of supersonic wind tunnels, it was deemed unwise to delay submission of the initial phase pending final agreement on the remainder of the plan. It is anticipated that remaining parts of the unitary plan will be forwarded to the Bureau of the Budget when approved.

INITIAL PHASE OF THE UNITARY PLAN

The initial phase of the unitary plan includes thirteen wind tunnels for university training and research, three 2-foot wind tunnels for research and development to be located at NACA Ames laboratory, NACA Langley laboratory, and Navy David W. Taylor model basin, respectively; two 4-foot tunnels for research and development to be located at NACA Ames and Langley laboratories, and necessary service facilities; at a total estimated cost of $77,000,000. The wind tunnels at Government stations will be equally available to the NACA, and to the military services and their industrial contractors for development purposes.

RECOMMENDATION

The Secretary of Defense and the National Advisory Committee for Aeronautics concur in the need for the facilities proposed in the initial phase of the unitary plan. Legislative authorization is required for implementing certain aspects of this initial phase. We join in recommending approval of the enclosed draft of legislation required to accomplish this purpose. We feel that the urgency and importance of the plan justify expeditious action in the national interest.

JAMES FORRESTAL,
Secretary of Defense.

J. C. HUNSAKER,
Chairman, National Advisory Committee for Aeronautics.

ENCLOSURE 2

TITLE II OF PROPOSED BILL TO PROMOTE THE NATIONAL DEFENSE BY AUTHORIZING A UNITARY PLAN FOR CONSTRUCTION OF TRANSONIC AND SUPERSONIC WIND TUNNEL FACILITIES AND THE ESTABLISHMENT OF AN AIR ENGINEERING DEVELOPMENT CENTER

The purpose of title II of the proposed legislation is to authorize the Secretary of the Air Force to establish a new Air Engineering Development Center in order to assure the modernization and continued aggressive development of military aircraft and air weapons, particularly in the newly opened and unexplored field of supersonic flight.

In 1945 it became apparent that the new requirements of jet-propelled aircraft and supersonic flight were rapidly making existing test facilities obsolete. For this reason an intensive study of new facility requirements was made by the Air Force leading to the proposal for an Air Engineering Development Center. The unusual magnitude of power and water requirements of the newer types of facilities makes it necessary to establish the new center in a location where large power and water potentials exist.

The proposed Air Engineering Development Center has undergone a process of detailed coordination since early 1945 with the other military services and interested agencies to avoid duplication and to insure an integrated effort on a national scale. As an example of this, the wind tunnels of the Air Engineering Development Center form a part of the so-called unitary plan or "National Program of Transonic and Supersonic Wind Tunnels" formulated by a special panel of the National Advisory Committee for Aeronautics.

The Research and Development Board has carefully reviewed and approved the establishment of an Air Engineering Development Center as necessary for the proper implementation of the national military research and development program.

The fiscal effects of title II of this bill are reflected therein and are also indicated by the fact that the initial cost of establishing a new center and providing the facilities approved by the Research and Development Board is estimated at approximately $50,000,000 during fiscal year 1950.

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MAR 28 '49

[No. 29]

FULL COMMITTEE HEARINGS ON S. 278 AND S. 629

REPORT OF SUBCOMMITTEES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Tuesday, March 15, 1949.

The committee met at 10:30 o'clock, a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. Now, Mr. Kilday, do you want to take your bill for a half hour or do you want to go over until tomorrow?

Mr. KILDAY. I understand there are some reports from the subcommittees to the full committee.

The CHAIRMAN. Oh, yes.

Mr. KILDAY. They will probably take up the remaining time.

The CHAIRMAN. All right.

First, I appointed Mr. Brooks and Mr. Short to draft a resolution reference to the passing of our former distinguished chairman, Mr. Andrews. I think they have prepared such a resolution and I call Mr. Brooks to bring that up now.

Mr. BROOKS. Mr. Chairman, the committee met and drafted a solution, which I will ask the clerk to read to the committee.

Mr. HARPER (reading):

RESOLUTION—WALTER GRESHAM ANDREWS

The Committee on Armed Services of the House of Representatives has heard, h profound sorrow and deep regret, of the sudden death of our late and lanted friend, the former able and distinguished chairman of our committee, the norable Walter Gresham Andrews.

Those of us who had served with him for many years on our committee admired, pected, and loved Mr. Andrews because of the man he was.

He was truly a great American who served his country well in war and in peace. ter serving on the Mexican border, he commanded a company of expert machinenners in France in World War I. Gallant in action, he was wounded and was arded the Distinguished Service Cross. Returning to the country he loved, ran, and was elected, to Congress from the district in Buffalo, N. Y., and served re with distinction and honor for 18 years.

Not fully understood at times as to his motives, he succeeded in molding the o old Committees of Military and Naval Affairs into the Armed Services Comttee, which few men could have accomplished.

Always he was eminently fair, considerate, and helpful to the members of our mmittee, and we shall always remember him with deep and abiding gratitude r the service that he rendered to his country.

"Ham" Andrews—as we affectionately called him and as he liked to be called—as a vigorous, unselfish, and great, patriotic American.

Members of the Committee on the Armed Services wish the world to know that held him in the highest esteem and with fond affection, and we wish to extend his bereaved sister, Mrs. William P. Urban, and other kin, our sincere symathy in this hour of sorrow and irreparable loss.

The CHAIRMAN. The clerk will prepare the letter necessary to send ie resolution to his sister.

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The CHAIRMAN. Now, I will ask Mr. Kilday to give a report of his subcommittee on Senate bill 278.

(The bill referred to is as follows:)

[S. 278, 81st Cong., 1st sess.]

AN ACT To prevent retroactive checkage of payments erroneously made to certain retired officers of the Naval Reserve, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the term "Reserve components" as used in section 6 of the Act approved February 21, 1946 (60 Stat. 27; 34 U. S. C. 410b) shall include officers on the honorary retired list of the Naval Reserve or Marine Corps Reserve established by section 309 of the Naval Reserve Act of 1938, as amended (34 U. S. C. 855h).

SEC. 2. This Act shall be effective from February 21, 1946.

Passed the Senate February 8, 1949.

Attest:

LESLIE L. BIFFLE, *Secretary*.

Mr. KILDAY. Mr. Chairman, the purpose of the proposed legislation as amended, is threefold. First, it will remove what the committee considers to be an unjustifiable checkage of retired pay of four officers who served in World War II and who had met all of the requirements for retirement with pay under the provisions of Public Law 305 Seventy-ninth Congress.

Second, it will enable the Department of the Navy to compute the retired pay of five other Reserve officers who served in World War II who had previously been placed on the honorary retired list with pay and who, under the provisions of Public Law 305, Seventy-ninth Congress, were considered to be eligible for increased retired pay because of increased active service.

Third, as amended, the proposed legislation will remove any doubt as to the eligibility of persons heretofore or hereafter placed on the honorary retired list of the Naval or Marine Corps Reserve without pay to be retired if otherwise qualified under the provisions of title II of Public Law 810, Eightieth Congress.

Since the Naval Reserve Act of 1938 (34 U. S. C. 855h), the Navy and Marine Corps have maintained an honorary retired list for Reserve officers of the Navy and Marine Corps. Such personnel may be placed on the honorary retired list of the Naval and Marine Corps Reserve in recognition of long and honorable service as members of the Reserve components. The vast majority of the persons on the honorary list are retired without pay. However, under the 1938 act if a Reserve officer or enlisted man completes 30 years of active Federal service, he may be placed on the honorary retired list and draw pay computed at 50 percent of his base and longevity pay. In addition, officers and enlisted personnel with 20 years of active Federal service of which 10 of the last 11 years were continuous active duty are also eligible to be retired at 50 percent of their base and longevity pay.

At the outbreak of World War II, all personnel on the honorary retired list who were physically fit were recalled to active duty and served with distinction. In 1946 Congress passed Public Law 305, Seventy-ninth Congress, authorizing retirement of all Navy and Marine Corps officers, Reserves and Regulars alike, with 20 or more years of active Federal service at least 10 of which were active commissioned service, computed at 2½ percent times the number of years of active Federal service times the base and longevity pay of the high-

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t rank satisfactorily held during World War II. After the passage this act five officers who had been on the honorary retired list of e Naval Reserve were found to have had, as a result of their active ity during World War II, a total of 20 or more years of active Fedal service and were, therefore, retired by the Navy under the proions of Public Law 305. Approximately 1 year after these five icers had commenced to receive retired pay under Public Law 305, e Comptroller General in his decision of May 6, 1947, held that ese officers having once been retired to the honorary retired list re not eligible to be re-retired under the provisions of Public Law 5. He accordingly held that their retired pay should be terminated d further directed that these officers repay to the Government the ount of retired pay which they had already received.

As a result of this decision the Navy Department ceased paying ired pay to these officers; but permission was obtained from the mptroller General to withhold the retroactive checkage of pay in eyance until such time as the Congress had had an opportunity consider the necessary remedial legislation. Since the date of e Comptroller General's decision, one of the Reserve officers ncerned has died.

Passage of the proposed legislation will enable the Department of e Navy to resume payments to the surviving retired officers and also pay these officers or their estates the amount of money that has en withheld from them since the Comptroller General's decision.

In addition, passage of the proposed legislation will enable the epartment of the Navy to compute the retired pay of five other serve officers retired on the honorary retired list of the Naval serve who have heretofore received a flat 50 percent over their se and longevity pay under the Naval Reserve Act of 1938. Such omputation will be based upon their actual number of years of tive duty including those years served on recall to active duty since irement to the honorary retired list, and in the same manner now plicable to all other officers retired based on length of service.

The committee took cognizance of the further fact that such Reserve ficers and enlisted personnel now on the honorary retired lists the Navy and Marine Corps Reserve might be adversely affected a pending Comptroller General's decision with respect to the posle retirement of such personnel under the provisions of title III Public Law 810. On the basis of the Comptroller General's decin that officers once retired to the honorary retired list may not er again be re-retired under any other provision of law, it is assumed at the Comptroller General may very well rule that such personnel ho may otherwise be qualified would not be eligible for the retirent benefits of Title III of Public Law 810. Therefore, the committe amended the proposed measure to insure that such officers and nlisted personnel will not be precluded from the benefits of title III Public Law 810 merely because of their having been retired to the norary retired list of the Navy and Marine Corps Reserve without ty.

There is no comparable situation in any other branch of the armed rvices. Passage of the proposed legislation will not require the bligation of any new funds in view of the fact that these payments ave been provided for in past appropriations and in the 1950 budget.

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The bill was unanimously approved by the committee.

Mr. Chairman, with the amendment offered by the subcommittee, I move the favorable report of the bill.

The CHAIRMAN. Is there any objection to the favorable report of the bill as amended? If not, the bill, as amended, will be favorably reported.

Mr. Durham, is there a report from your subcommittee?

Mr. DURHAM. Yes; on S. 629,

(The bill referred to is as follows:)

[S. 629, 81st Cong., 1st sess.]

AN ACT To authorize the disposition of certain lost, abandoned, or unclaimed personal property comin into the possession of the Treasury Department, the Department of the Army, the Department of th Navy, or the Department of the Air Force, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States o America in Congress assembled, That the Secretary of the Treasury, the Secretar of the Army, the Secretary of the Navy, and the Secretary of the Air Force respectively, are hereby authorized to dispose of by sale or otherwise, one yea after date of receipt, all lost, abandoned, or unclaimed personal property which now or may hereafter come into the possession, custody, or control of the Treasur Department, the Department of the Army, the Department of the Navy, or th Department of the Air Force, as the case may be: *Provided*, That an effort sha be made to determine and locate the owner or owners thereof, or their leg representatives, and that in all cases where the owner thereof, or legal represent tive, has been determined the property shall not be sold or otherwise disposed o for a period of ninety days after written notice has been sent to his last know address.

SEC. 2. The net proceeds received from the sale of any such property by th Treasury Department, the Department of the Army, the Department of th Navy, or the Department of the Air Force shall be covered into the Treasury a miscellaneous receipts.

SEC. 3. Claims for the net proceeds, if any, of such property so disposed of ma be filed with the General Accounting Office by the rightful owners or their leg representatives at any time prior to the expiration of three years from the date o the disposal of the property and, if not so filed, are barred from being acted on b either courts or the accounting officers.

SEC. 4. The Secretary of the Treasury, the Secretary of the Army, the Secretar of the Navy, and the Secretary of the Air Force, respectively, are authorized t prescribe such rules and regulations as may be necessary to carry out the purpos and provisions of this Act.

SEC. 5. Any property coming within the provisions of this Act which may b delivered to the Soldier's Home under regulations prescribed by the Secretary o the Army or the Secretary of the Air Force shall be limited to papers of valu sabers, insignia, decorations, medals, watches, trinkets, manuscripts, or oth articles valuable chiefly as keepsakes.

SEC. 6. This Act shall not be construed as amending or repealing the Act o March 29, 1918 (40 Stat. 499); article 112 of section 1, chapter 11, of the Act o June 4, 1920 (41 Stat. 809); the Act of February 21, 1931 (46 Stat. 1203); the Ac of December 28, 1945 (59 Stat. 662), as amended; or the Act of August 2, 194 (60 Stat. 846–847), as amended.

Passed the Senate February 8, 1949.

Attest:

LESLIE L. BIFFLE, *Secretary.*

This bill is necessitated by the fact that there is a considerabl volume of personal property which has become lost, abandoned, or i unclaimed, and which has been brought back from overseas, now in th possession of the services, the owners of which cannot be located an yet no means is available by which to dispose of the property in a orderly manner. It is requiring quite a number of personnel to loo after this lost, abandoned, and unclaimed property.

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The committee has rewritten the Senate bill because of the fact that it was not very clear as to some of the disposal procedures, which carries with it, in effect, the authority to sell this property and the funds go back to the Treasury Department.

Mr. SHORT. The general fund?

Mr. DURHAM. Yes; miscellaneous receipts. The small trinkets and things like that that have been brought back have been brought back because the services have not been able to locate the owners over the past 3 years. Trinkets and keepsakes and personal things go to the Soldiers' Home, and the rightful owners, if located, have a right to recover that in the next 2 years and also, if anything is sold, they have a right to recover the funds obtained from its sale, if they can establish ownership.

That, Mr. Chairman, covers the bill, which was unanimously approved by the subcommittee.

The CHAIRMAN. Any questions in regard to the provisions of Senate bill 629?

Mr. SASSCER. This, I understand, Mr. Chairman, is simply property of individuals and no Government property is involved at all.

The CHAIRMAN. Yes.

Mr. VAN ZANDT. Who are the individuals that are involved—civilians?

Mr. DURHAM. They are probably civilians now. It is property of people shipped back from ports.

The CHAIRMAN. What is the pleasure of the committee with reference to this bill?

Mr. VAN ZANDT. Does this represent any confiscated equipment brought back by Army personnel?

Mr. DURHAM. No; it is personal and service equipment lost or abandoned.

Mr. Chairman, I move that the bill as amended be approved by the committee.

The CHAIRMAN. Without objection, the amended bill will be agreed to and Mr. Durham will report the bill.

Now, members of the committee, I want to thank each one of you for your attendance on the subcommittees. I am much gratified to know that nearly every day every man who is on a subcommittee has been present at its meetings and it is quite beneficial to the work of the full committee.

Tomorrow morning, Mr. Durham's subcommittee will meet in the large caucus room to take up the subject matter of armories.

Tomorrow, Mr. Brooks will meet with his subcommittee No. 1 to continue the hearing on the military-justice bill.

Mr. Kilday's subcommittee No. 2 will meet here to continue with the pay bill.

The plan tomorrow is, after we dispose of the rent-control bill in the House, to bring in the rule to take up the composition bill for which 4 hours' general debate has been granted. I hope every member of the committee will be in attendance on the floor of the House tomorrow and I trust you will take part in the debate, as we have 4 hours of debate that should be worth while.

It is a quarter to 11 now. It is a little late to take up Mr. Kilday's pay bill, and I suggest we take a recess.

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Mr. ANDERSON. Mr. Chairman, before we take a recess, I want to bring up the discussion we had in reference to the appointment of a special subcommittee to investigate the reason why the Reserve programs have bogged down so badly.

The CHAIRMAN. Well, I will be glad to discuss that with you and Mr. Short and the policy committee and we will try to reach some decision about it in the next 2 or 3 days.

Mr. ANDERSON. Fine.

The CHAIRMAN. Members of the committee, I know of nothing further for us to do this morning, but I want to make this statement before we recess.

Mr. Forrestal retires at the end of this month. On the 29th, a week from Tuesday, I am asking Mr. Forrestal to appear before the committee, as we want him up here before he officially retires.

That is all this morning. We will adjourn and the subcommittees will go to work tomorrow and we will take a recess until next week.

(Whereupon, at 10:40 a. m., the committee adjourned.)

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[No. 30]

TO REPEAL THAT PART OF SECTION 3 OF THE ACT OF JUNE 24, 1926 (44 STAT. 767), AS AMENDED, AND THAT PART OF SECTION 13a OF THE ACT OF JUNE 3, 1916 (39 STAT. 166), AS AMENDED, RELATING TO THE PERCENTAGE, IN TIME OF PEACE, OF ENLISTED PERSONNEL EMPLOYED IN AVIATION TACTICAL UNITS OF THE NAVY, MARINE CORPS, AND AIR CORPS, AND FOR OTHER PURPOSES (H. R. 3712). MR. VINSON

THE SECRETATY OF DEFENSE,
Washington, March 11, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Navy recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To repeal that part of section 3 of the Act of June 24, 1926 (44 Stat. 767), as amended, and that part of section 13a of the Act of June 3, 1916 (39 Stat. 166), as amended, relating to the percentage, in time of peace, of enlisted personnel employed in aviation tactical units of the Navy, Marine Corps, and Air Corps, and for other purposes".

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Navy.

Sincerely yours,

JAMES FORRESTAL.

THE SECRETARY OF THE NAVY,
Washington, March 3, 1949.

The Honorable SAM RAYBURN,
Speaker of the House of Representatives, Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to repeal that part of section 3 of the act of June 24, 1926 (44 Stat. 767), as amended, and that part of section 13a of the act of June 3, 1916 (39 Stat. 166), as amended, relating to the percentage, in time of peace, of enlisted personnel employed in aviation tactical units of the Navy, Marine Corps, and Air Corps, and for other purposes.

The purpose of the proposed legislation is to repeal paragraph 8 of section 3 of the act of June 24, 1926, which provides that, in time of peace, not less than 20 percent of the total number of pilots employed in aviation tactical units of the Navy and Marine Corps shall be enlisted men, except when the Secretary of the Navy shall determine that it is impracticable to secure that number of enlisted pilots. A similar provision of law, relating to the number of enlisted pilots in the Air Corps, would also be repealed. The proposed bill further provides that the status of enlisted personnel designated as aviation pilots or engaged in training leading to the designation as aviation pilot shall not be changed.

The provision of law which would be repealed by the proposed bill and which provides for the number of enlisted pilots in the Navy and Marine Corps has been rendered impracticable of accomplishment by the enactment of Public Law 729,

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Seventy-ninth Congress, approved August 13, 1946, which provides for the training of officers for the naval service. One of the provisions of that act relates to the naval aviation college program which provides for flight training of enlisted men. The Secretary of the Navy is authorized under that act to enroll the following in the training program as naval aviation officer candidates:

(1) any high-school graduate or person of equivalent educational level;

(2) any person who has completed satisfactorily less than two scholastic years' work in an accredited college or university;

(3) any member of the Naval Reserve Officers' Training Corps who has satisfactorily completed two scholastic years' work in an accredited college or university;

(4) any enlisted man of the Navy or Marine Corps who demonstrates by a test the attainment of an educational level equivalent to that of two scholastic years' work in an accredited college or university.

The candidates in groups (1) and (2) in the preceding paragraph are enlisted as seamen recruits, United States Naval Reserve, and are required to attend an accredited college or university until the completion of not less than two scholastic years' work. Upon the completion of the required college work, these candidates are appointed midshipmen in the Navy and are ordered to duty for flight training. The candidates in groups (3) and (4), upon enrollment in the program, are appointed midshipmen in the Navy and are ordered to duty for flight training. The candidates under this training program may be commissioned as ensigns in the line of the Navy or second lieutenants in the Marine Corps following the satisfactory completion of 2 years' flight training and flight duty as midshipmen.

The Air Force desires to conduct a college aviation program similar to that described above, which would likewise render inapplicable the present requirement for enlisted pilots. The Department of the Air Force contends that the responsibility of command and employment of modern aircraft is of such nature as to require the qualifications of commissioned personnel.

The Navy Department has been designated by the Office of the Secretary of Defense to present this proposal on behalf of the National Military Establishment. The Navy Department accordingly recommends enactment of this measure.

Enactment of the proposed legislation will result in no additional cost to the Government inasmuch as it is designed to repeal unnecessary provisions of law.

This report has been coordinated within the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

JOHN NICHOLAS BROWN, *Acting.*

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[No. 31]

FULL COMMITTEE HEARINGS ON NAVAL PETROLEUM RESERVE NO. 2

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Tuesday, March 15, 1949.

The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. The committee will come to order.

Commodore, will you come forward.

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. Now, Commodore, under the law you are required to come here to consult with the committee with reference to any changes in the naval petroleum reserves. I understand you have some comment to make in regard to Naval Petroleum Reserve No. 2, the Buena Vista Hills oil and gas field.

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. The committee will be pleased to hear what you have to say.

STATEMENT OF W. G. GREENMAN, COMMODORE, UNITED STATES NAVY, DIRECTOR, NAVAL PETROLEUM RESERVES

Commodore GREENMAN. Mr. Chairman and members of the committee, I have no prepared statement, for the reason that I submitted to you copies of all of the correspondence with relation to this proposition sometime ago.

However, if I may be permitted, I would like to read the Secretary's letter addressed to you.

The CHAIRMAN. One minute——

Commodore GREENMAN. And then from there to attempt to make any explanation that the committee might desire in connection with this.

The CHAIRMAN. All the information you sent me was mailed to each member of the committee.

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. They all had a copy of it at that time. Go ahead.

Commodore GREENMAN (reading):

MY DEAR MR. CHAIRMAN: This letter is addressed to you in compliance with the act of June 17, 1944 (58 Stat. 280; 34 U. S. C. 524) which requires, among other things, that no contract relating to lands of the naval petroleum reserves shall become effective until after consultation in regard to all its details with the Armed Services Committees of Congress and after approval by the President.

Appended (appendix J) is a proposed unit agreement for the 27-B pool of the Buena Vista Hills oil and gas field, Kern County, Calif. (Naval Petroleum Reserve No. 2). This agreement has been negotiated by the Director, Naval Petroleum Reserves, in consultation with the United States Geological Survey and representatives of the Union Oil Co. of California, Tide Water Asso-

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ciated Oil Co., Murvale Oil Co., Honolulu Oil Corp, and the Standard Oil Co. of California, to the point where the Navy Department and the participating companies are in agreement on its form and provisions. The Judge Advocate General of the Navy has approved this agreement as to legality. I now submit the final draft of the agreement for your consideration and for such consultation thereon as your committee may desire. After consultation with your committee, Presidential approval must be obtained before it becomes effective. In this connection I invited attention to an index of related correspondence which was enclosed in the original brochure that I submitted to the committee.

I have forwarded this proposed agreement to the Secretary of the Interior for his views as to whether or not its terms and conditions are sufficiently in the public interest to warrant my approval, and to the Attorney General for his approval as to legality.

The Secretary of the Interior, in his reply dated January 3, 1949 (see appendix E) informs me that in his opinion the terms and conditions of the agreement are sufficiently in the public interest to warrant my approval. However, he mentions three points for consideration without making any recommendation or objectionable inference. These points all have to do with clarification of the document. The suggested changes have been adopted by the Navy Department, on advice of the Judge Advocate General, and have been reviewed by the Attorney General as indicated in his letter to me (see appendix F). All the participating parties have agreed to their inclusion and they have been embodied in the agreement or are covered by the supplemental letter to the Secretary of the Navy (appendix K) referred to below.

The Attorney General, in response to my inquiry as to the legality of the instruments, advises me in his letter of February 1, 1949 (see appendix F) that in his opinion the proposed agreement conforms with Federal law. He suggests, however, the deletion from section 17 (b) of the last phrase thereof because it is not relevant to the agreement and because it might impinge on the authority of the legislative branch of the Government. This suggested deletion has been agreed to by the Navy Department after consultation with the Judge Advocate General. The participants have accepted the change and it has been deleted from the agreement.

There is attached to the unit agreement a proposed letter addressed to the Secretary of the Navy which will be signed by all participants. This letter supplements the proposed agreement in that it gives the Navy additional inspection privileges which it does not now have.

Appendix A gives a detailed description of the document. Appendix B sets forth the statutory authority permitting the Secretary of the Navy to enter into this agreement, and the Judge Advocate General's opinion that there is adequate legal consideration and that substantial benefits will flow to the United States when the agreement is entered into and approved. Appendix G is a copy of a letter signed by each participant indicating his willingness to execute this agreement and the above-mentioned letter. Appendix H is a memorandum setting forth a concise statement of what the unit agreement accomplishes.

It is my opinion that prompt unitization of this pool is essential in order to secure the greatest ultimate recovery of oil and that the proposed unit agreement will accomplish this purpose. It is further my opinion that the execution of this agreement will be in the best interests of the Government and that the benefits therefrom will be substantial. Therefore, may I respectfully request that this matter be given the earliest possible consideration by your committee.

W. JOHN KENNEY,
Acting Secretary of the Navy.

May I file in the record, Mr. Chairman, a copy of the letter from the Secretary of the Interior and from the Attorney General, which are referred to?

The CHAIRMAN. And also put the unit agreement in the record.

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. We want a complete record of everything relating to this subject matter.

Commodore GREENMAN. In that event, then, I would like to file starting with my letter to the Secretary, the Judge Advocate General's approval, the Secretary's letters to the Attorney General and to the

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ecretary of the Interior, the replies from those two Secretaries, and
ie letter to you.

The CHAIRMAN. And then the unit agreement.

Commodore GREENMAN. And the unit agreement. That will cover
e whole scope.

The CHAIRMAN. All right.

Commodore GREENMAN. Yes, sir.

(The documents referred to are as follows:)

DEX OF APPENDED COPIES OF CORRESPONDENCE RELATING TO THE UNIT AGREEMENT FOR THE 27–B POOL OF THE BUENA VISTA HILLS OIL AND GAS FIELD

Appendix

le

) Director, Naval Petroleum Reserves, letter to Secretary of the Navy dated November 24, 1948, describing in detail the unit agreement and what it will accomplish.

) Judge Advocate General of the Navy endorsement forwarding item (A), dated December 2, 1948, citing the statutory authority authorizing the Secretary to enter into such agreements and approving it as to form and legality.

) Secretary of the Navy letter to Secretary of the Interior dated December 3, 1948, requesting his opinion of the agreement from a technical standpoint.

') Secretary of the Navy letter to the Attorney General dated December 3, 1948, requesting his views as to legality of the document.

) Secretary of the Interior letter to Secretary of the Navy dated January 3, 1949, approving the agreement as being in the public interest.

' Attorney General letter to Secretary of the Navy dated February 1, 1949, approving the agreement as to legality.

) Letter dated November 9, 1948, signed by officials of participating companies in the agreement, signifying their willingness to execute definitive counterparts of the agreement.

) Memorandum setting forth an outline of what the agreement accomplishes.

Analysis of effect of the advantage to the Government of the proposed 27–B pool unitization as compared with present competitive operations based on production from proposed unitized area.

' Proposed unit agreement.

) Letter from participants to Secretary of the Navy affording privileges to Navy not included in agreement.

APPENDIX A

NOVEMBER 24, 1948.

om: Director, Naval Petroleum Reserves.

: The Secretary of the Navy.

a: The Judge Advocate General.

bject: Unit agreement for the 27–B pool of the Buena Vista Hills oil and gas field, Kern County, Calif. (Naval Petroleum Reserve No. 2).

iclosures: (A) Letter from participants in 27–B pool unit agreement to Secretary of the Navy dated November 9, 1948.

(B) Unit agreement for the 27–B pool of the Buena Vista Hills oil and gas field, Kern County, Calif., proof of November 8, 1948.

(C) Supplemental statement supporting negotiated royalty rate of 12.9 percent.

1. In consultation with representatives of the United States Geological Survey, :partment of the Interior, the subject agreement has been negotiated by the rector and representatives of Union Oil Co. of California, Tide Water Asso- ated Oil Co., Murvale Oil Co., Honolulu Oil Corp., and Standard Oil Co. of lifornia, to the point where the Director and the participating companies are agreement on its form and provisions. Attached is a copy of the instrument d a letter signed by the participating companies indicating their willingness to ecute it.

2. The 27–B pool, as defined in the unit agreement and hereinafter sometimes entioned as the "pool," is an oil and gas zone discovered in 1944 within the undaries of Naval Petroleum Reserve No. 2 stratigraphically lower than the

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other pools therein which have been producing for many years. To date, 18 wells have been drilled in this pool and its development is substantially complete. At the present time, all lease production from all pools in the Buena Vista Hi field is commingled by each lessee and royalties are paid on such commingled oil This agreement will require segregation of the 27–B pool oil from that from the other pools.

3. The lands in the area concerned comprise 6,755 acres, of which 3,995 acre are owned in fee by the Standard Oil Co. of California, Tide Water Associate Oil Co., and North American Oil Consolidated; 2,760 acres are Government land which have been leased for many years to the Honolulu Oil Corp., Tide Wate Associated Oil Co., Murvale Oil Co., Union Oil Co. of California, and Nort American Oil Consolidated. The Government leases have all been extended fo the life of production by virtue of their having been included in that certai plan-agreement for cooperative development of lands of the United States i Buena Vista Hills oil and gas field, Kern County, Calif., dated October 1, 193 and approved by the Secretary of the Interior and by the Secretary of the Nav with the consent of the President.

4. The Government leases participating in the unit agreement are Sacrament Nos. 019343, 019386 (b), and 091385 (b), owned by the Honolulu Oil Corp Sacramento Nos. 019352 and 019352 (b), owned by the Union Oil Co. of Calif nia; Sacramento No. 019571, owned by the Tide Water Associated Oil Co.; a Sacramento No. 019577, owned by the Murvale Oil Co. The properties of Nor American Oil Consolidated (600 acres) comprising 4.98 percent of the productiv area and 3.467 percent of the productive sand volume thus far are not committe to the subject agreement either as to said company's Government leases or as its lands owned in fee.

5. Unitization means the consolidation of the interests of all owners and t operation of the entire area as a single property to eliminate present competiti operations and incident uneconomical practices. It permits effective reserv control by shutting in high gas-oil ratio wells with resultant conservation reservoir energy and restoration of reservior pressure and pressure-control ope tions by gas injection. This control assures a greater ultimate oil recovery a lower costs than would be possible under competitive operations.

6. The agreement provides for unitization on the basis of the acre-feet of p ductive formations in the pool. This method is a sound engineering and scient basis for determining, fairly, participating interests under the conditions existi in the pool. Participations under the agreement are as follows:

	Perce
Standard	77. 74
Tide Water Associated	9. 70
Honolulu	7. 86
Murvale	2. 95
Union	1. 72

On this basis, the privately owned lands of Standard and Tide Water Associa will participate in production and expense to the extent of 80.82225 perce and the Government's leased lands to the extent of 19.17775 percent. This an extremely advantageous basis of sharing as far as the United States and lessees are concerned. This is because under normal competitive operation i. e., in the absence of unitization due to their locations with respect to structu conditions—the Government's lessees will be unable to produce as much of remaining recoverable oil in the pool as the 19.17775 percent which is alloca and guaranteed them under the proposed agreement. It is estimated that so 400 acres (15 percent) of the lands of the participating Government lessees within the present limits of the gas cap and 250 acres (9.5 percent) are within area into which water has encroached. The Government will receive its roy on the basis of the participations assigned to its lessees under the unit agreem regardless of these conditions which could well have caused these areas to be counted or weighted downward in computing sand volumes which, fortunate was not done. (See map, p. 37 of enclosure (A) hereto.)

7. In oil pools where migration of oil occurs as in this pool, it is only by uniti tion that the soundest and most efficient oil-field practices can be achie Without unitization under an agreement such as the one here presented, e lessee must fend for himself and neither the lessee nor the Government land can adopt or force the practices that are so necessary to insure economically greatest ultimate recovery. The Government has now no control over privat owned land and no effective control over the rate and quantity of production f its leased lands. Under the unit agreement, the participants agree to cond

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ir operations to obtain the maximum economic recovery of oil, gas, and asso-
ted hydrocarbons from the unit area in accordance with sound oil-field engi-
ring practices and without waste; they further agree to institute gas injection
d pressure-control operations to that end. Furthermore, the participants
ee that if the Secretary of the Navy shall be of the opinion that the rates of
oduction are not fixed in accordance with sound and efficient oil-field practices,
may demand that this be done through an arbitration procedure provided in
agreement. This permits the exercise of a power which the Secretary of the
vy does not have and would not have except for this agreement.

8. The existing leases covering Government lands have "sliding scale" royalty
es depending upon the average daily production per well on each lease. Such
yalty rates are not fair or practical under this unit agreement for the following
sons:

(*a*) Economy and efficiency of operation of this pool dictate the cutting down rather than increasing or maintaining the present number of operating wells. A sliding-scale royalty arrangement inevitably tends to work against this desirable result.

(*b*) The necessary segregation of the oil produced from the pool from that produced from the horizons above the pool would deprive the lessees of their now existing right to average oil from wells having higher production with the oil from wells having lower production and thus by averaging obtain a lower royalty rate. If the sliding-scale rates in the existing leases were applied to the segregated oil, it would actually mean that the lessees would be penalized in entering the agreement as they would be required to pay the Government higher royalty than they do now, which is not fair.

r these reasons, it was necessary to negotiate a flat royalty rate for the pool
oduction allocated to these leases in lieu of the existing sliding-scale rates.

9. Studies indicated that under normal competitive operations the royalty
te under the sliding-scale provisions of the leases would, in the near future,
ach the minimum of 12.5 percent because of the effect on average daily produc-
on per well of the 99 old producing wells on Government lands drilled to the
per pools. The Director considered that the Government should receive
yalty on all additional oil to be produced from the pool and allocated to the
overnment lands as a result of the unit agreement. Proceeding on this basis
d still maintaining the sliding-scale royalty rates of the original leases but
gregating production from the pool, a flat across-the-board fixed royalty rate
as calculated for the pool on the basis of an estimated decline in production
ovided by the United States Geological Survey. By this means, 12.9 percent
as determined to be a fair royalty rate for the remaining life of the pool under
nitization, and that it would yield approximately the same royalty as the sliding-
cale rates were the additional oil accruing from unitization actually produced
om the leased land without unitization. The 12.9-percent rate for royalty oil is
ot only higher than a minimum which would soon be reached if competitive
perations continue but, in the Director's opinion, it will yield the Government
onsiderably more revenue than it could possibly anticipate were the unit agree-
ent not entered into. In the attached "supplemental statement" are found the
stimates which support the negotiated rate of 12.9 percent. The royalty rates
n natural gas and natural gasoline allocated to the several Government leases
emain unchanged.

10. The Director is of the opinion that prompt unitization of this pool is
ssential in order to secure the greatest ultimate recovery of oil, and he believes
he proposed unit agreement will accomplish this purpose and is in the best
nterests of the Government. Therefore, it is recommended that this unit agree-
ment, if approved by you, be submitted by you to the Attorney General for an
pinion as to its legality, to the Secretary of the Interior for an opinion as to
whether its terms and conditions are sufficiently in the public interest, and then
orwarded to the Armed Services Committees of the Congress for such con-
ultation as they desire to hold to comply with the law. After such consultation,
he agreement must be submitted to the President for his consent and finally
igned by you.

W. G. GREENMAN.

SUPPLEMENTAL STATEMENT

A feature of the proposed unit agreement for the 27–B pool which must be
noted is that the gas-cap areas and the areas into which water has encroached
have been given the same credit for productivity as the clean-oil productive

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areas; i. e., they have not been weighted downward or discounted because of the inability of wells in this area to produce as much oil as the wells in areas not so affected. Consequently, the allocation of oil under the agreement to the Government's leased lands in the gas cap is much greater than these areas can produce.

Production from the participating Government lands in the area unitized has declined from 16.27 percent of production in January 1947 to 13.19 percent in January 1948 and to 11.07 percent in August 1948. Under the unit agreement the participating Government leases will be allocated 19.17775 percent of production, or 73.24 percent more oil than was produced therefrom in August 1948.

The following tabulated figures prepared by the United States Geological Survey and by the inspector, naval petroleum reserves in California, reflect estimates which have been made to show the quantities of oil which would be produced and the royalties the Government would receive from the participating leased lands under both competitive operations and unitization.

Under competitive operations

	Reserves, barrels	Royalty	
		Barrels	Percen
U. S. Geological Survey	4,572,000	571,500	12
Inspector, naval petroleum reserves in California	8,640,000	1,080,000	12

Under unit agreement

	Allocated, barrels	Royalty	
		Barrels	Perce
U. S. Geological Survey	11,622,000	1,452,750	12
Inspector, naval petroleum reserves in California	11,520,000	1,440,000	12

The United States Geological Survey estimate made on the basis of prese lease rates would provide between 22,000 and 30,000 barrels of royalty oil excess of the number of barrels of royalty oil that would accrue if a flat 12 percent royalty were in effect, and that a fair royalty rate would be one-eigh of the allocated oil plus such additional oil, or between 12.69 and 12.76 perce on the basis of 11,622,000 barrels of allocated oil above indicated.

A separate estimate made in the Office of the Director, based on an anticipat decline in production from the 27–B pool under unitization taken from the en neering report, 27–B pool, Buena Vista Hills field, prepared in connection wi the proposed unit operation by C. T. Murray and L. J. Blessing, United Stat Geological Survey, March 18, 1948, over a 14-year period from 1949 to 196 inclusive, and from an average daily production of 25,000 barrels per day in 19 to 3,000 barrels per day in 1962; the continued decline of the old wells at the present indicated rates; and allocating production from the 27–B pool to t leased lands on the basis of 19.17775 percent in the unit agreement developed t following results:

Estimated total production, 27–B pool	barrels	60,644,7
Estimated allocation to participating leases	do	11,630,3
Estimated Government royalty under present lease terms	do	1,503,1
Estimated Government royalty under present lease terms	percent	12.9

All engineers who have worked on this problem have estimated that the recov able oil in the participating area will be increased by approximately 20,000,0 barrels through unitization and pressure maintenance or from approximate 40,000,000 barrels under competitive conditions to more than 60,000,000 barr under unitization.

In connection with these estimates, it is interesting to note that using t estimates least favorable to the Government under both continued competit operations and under unitization, there is an indicated benefit to the Governme from operations under the agreement amounting to some 360,000 barrels of ad tional royalty oil. On the basis of present prices, this represents a cash bene

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o the Government through the agreement of $928,800. However, the possible enefits may be considerably greater than this estimated sum.

The current price for 27–B pool oil from the leased lands (average gravity 0.6°) is $2.58 per barrel.

APPENDIX B

DECEMBER 2, 1948.

rom: The Judge Advocate General.
o: The Secretary of the Navy.
ubject: Unit agreement for the 27–B pool of the Buena Vista Hills oil and gas field, Kern County, Calif. (Naval Petroleum Reserve No. 2).
nclosures: (A) Suggested letter to the Attorney General.
(B) Suggested letter to the Secretary of the Interior.

1. Forwarded. Subject agreement is approved as to legality in its present form.

2. The authority for the Secretary of the Navy, with the consent of the Presi-ent, to enter into this agreement is to be found in the act of Congress of February 5, 1920 (41 Stat. 437), as amended by the act of Congress approved August 8, 946 (60 Stat. 950) and the act of June 4, 1920 (41 Stat. 813) as amended by the cts of Congress approved June 30, 1938 (52 Stat. 1252), and June 17, 1944 58 Stat. 280).

3. The act of June 4, 1920, as amended, directs the Secretary of the Navy to ake possession of all properties within the naval petroleum reserves as are or ay become subject to the control and use by the United States for naval purposes; o explore, prospect, conserve, develop, use, and operate the same in his discretion, ubject to approval by the President, directly or by contract, lease, or otherwise; nd by the amendatory act of June 17, 1944 (58 Stat. 280), provided further that he Secretary of the Navy, as to Naval Petroleum Reserve No. 1, may enter into ontracts for joint, unit, or other cooperative plans of exploration, prospecting, onservation, development, use, and operation of lands owned or controlled by he United States within that reserve and lands owned or leased by private inter-sts within the reserve or outside thereof upon certain conditions set forth in the ct.

4. The act of August 8, 1946 (60 Stat. 950), which amended the act of Febru-ry 25, 1920 (41 Stat. 437), provides that the Secretary of the Navy is authorized ith the consent of the President to enter into agreements such as those provided or in section 17 (b) of the act of February 25, 1920, as amended by the act of ugust 8, 1946, which agreements shall not, unless expressed therein, operate to xtend the term of any lease affected thereby.

5. Section 17 (b) of the act of February 25, 1920, as amended by the act of ugust 8, 1946, provides that for the purpose of more properly conserving the atural resources of any oil or gas pool, field, or like area, or any part thereof whether or not any part of said oil or gas pool, field, or like area is then subject o any cooperative or unit plan of development or operation), lessees thereof and heir representatives may unite with each other or jointly or separately with thers in collectively adopting and operating under a cooperative or unit plan f development or operation of such pool, field, or like area, or any part thereof, henever determined and certified by the Secretary of the Interior to be necessary r advisable in the public interest. The Secretary is authorized, in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or evoke drilling, producing, rental, minimum royalty and royalty requirements f such leases and to make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation f any such cooperative or unit plan as he may deem necessary or proper to secure he proper protection of the public interest. The Secretary is also authorized in any such plan to include a provision whereby authority is vested in the Secretary r any such person, committee, or State or Federal officer or agency as may be designated in the plan, to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan.

6. The lands of the United States which would be subject to this unit agreement have been leased to private parties, and such leases have been extended beyond their original 20-year terms by virtue of their inclusion under that certain plan-agreement for cooperative development of lands of the United States in Buena Vista Hills oil and gas field, Kern County, Calif., dated October 1, 1935, heretofore approved by the Secretary of the Interior and by the Secretary of the Navy, with consent of the President of the United States. Notwithstanding that such lands

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are subject to said plan-agreement, this agreement may be entered into and approved under section 13 of the act of August 8, 1946, which provides:

"SEC. 13. Nothing in this Act shall be construed as affecting existing leases within the borders of the naval petroleum reserves, or agreements concerning operations thereunder or in relation thereto, but the Secretary of the Navy is hereby authorized, with the consent of the President, to enter into agreements such as those provided for in section 17 (b) of the Act of February 25, 1920, as amended by this Act, which agreements shall not, unless expressed therein, operate to extend the term of any lease affected thereby."

7. There is adequate legal consideration, and substantial benefits will flow to the United States, when this unit agreement is entered into and approved, as it will—

(*a*) Assure that the Government will receive royalty on a larger percentage of the oil to be produced from the pool than it could otherwise expect to receive under competititve operations.

(*b*) Assure the Government that the lands (both Government and privately owned) will be operated in accordance with sound and efficient oil-field practices, thus assuring a greater ultimate recovery of oil from the pool which is in the public interest and in aid of national defense.

(*c*) Provide a method of arbitration to determine production rates from the pool, if it appears to the Secretary of the Navy that the pool is not being operated in accordance with sound and efficient oil-field practices to obtain ultimately the economic maximum recovery of oil, gas, and associated hydrocarbons from the pool. The Secretary of the Navy presently has no such right with respect to the privately owned lands nor has he any effective control over the quantity and rate of production under the leases on the Government lands which will be made subject to the unit agreement.

8. The United States is not required to pay any of the costs of developing and operating the pool, as all such costs are to be borne by the lessees of the Government and the owners of the private lands who are participants under the unit agreement.

9. While the primary statutory authority for entering into or approval of this agreement is to be found in section 13 of the act of August 8, 1946, both this act and the act of June 17, 1944, require the approval or consent of the President, and the latter act requires consultation with the Armed Services Committees of the Congress. In anticipation of your desire to transmit this matter to the Attorney General for an opinion as to legality and to the Secretary of the Interior for an opinion as to whether its terms and conditions are sufficiently in the public interest, there are submitted herewith suggested letters of transmittal to the Attorney General and the Secretary of the Interior. It is recommended that they be signed and returned to this office for mailing. Upon receipt of replies from the Attorney General and the Secretary of the Interior, appropriate letters will be prepared for your signature submitting the unit agreement to the chairmen of the Armed Services Committees of the Congress.

G. L. RUSSELL.

APPENDIX C

DECEMBER 3, 1948.

The honorable the SECRETARY OF THE INTERIOR,
Washington, D. C.

MY DEAR MR. SECRETARY: There is submitted herewith a copy of a proposed unit agreement for the 27–B pool of the Buena Vista Hills oil and gas field, Kern County, Calif., between Union Oil Co. of California, Tide Water Associated Oil Co., Murvale Oil Co., Honolulu Oil Corp., and Standard Oil Co. of California, along with a letter to me from the Director, Naval Petroleum Reserves, which discusses its details, and the endorsement thereon of the Judge Advocate General of the Navy.

At the request of the Navy, representatives of the United States Geological Survey have participated in the negotiations leading up to this agreement, and their cooperation has been most helpful.

I am advised that this unit agreement closely conforms with the principles incorporated in the unit agreement for the Gatchell zone of the Coalinga Nose oil and gas field in Fresno County, Calif., which your Department has recently approved.

May I request that you cause this unit agreement to be reviewed and advise me if, in your opinion, the terms and conditions therein are sufficiently in the public

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erest to warrant approval thereof by the Secretary of the Navy, with the con-
it of the President.
I am forwarding a copy of the unit agreement to the Attorney General for his
inion as to its legality. I shall, therefore, not request you to pass upon the
tter from a legal standpoint. A copy of my letter to the Attorney General
mitting the matter to him is enclosed. Upon receipt of your views and the
torney General's opinion, I propose to send the agreement with copies of your
ly and the Attorney General's opinion to the chairmen of the Armed Services
mmittees of the Congress for their review and such consultation as may be
sired.
Your early consideration will be appreciated.
Sincerely yours,

M. E. ANDREWS,
Acting Secretary of the Navy.

Enclosures: (4).

APPENDIX D

DECEMBER 3, 1948.

ie honorable the ATTORNEY GENERAL,
Washington, D. C.

MY DEAR MR. ATTORNEY GENERAL: There is submitted herewith for your
proval as to legality a draft of a proposed unit agreement for the 27–B pool of
e Buena Vista Hills oil and gas field, Kern County, Calif., between Union Oil
. of California, Tide Water Associated Oil Co., Murvale Oil Co., Honolulu Oil
rp., and Standard Oil Co. of California, along with a letter to me from the
rector, Naval Petroleum Reserves, concerning the agreement, and the endorse-
nt of the Judge Advocate General of the Navy thereon.
This unit agreement involves Government lands which are under oil and gas
ses to private parties, and privately owned lands within the boundaries of
aval Petroleum Reserve No. 2. The agreement cannot become effective until
proved by the Secretary of the Navy, with the consent of the President. The
it agreement generally follows the form of the unit agreement for the Gatchell
ne of the Coalinga Nose oil and gas field in Fresno County, Calif., recently
proved by the Secretary of the Interior for public land leases under the pro-
sions of the Leasing Act of February 25, 1920, as amended (41 Stat. 437).
The Judge Advocate General of the Navy has approved this unit agreement as
legality.
This unit agreement will be submitted to the Armed Services Committees of
ie Congress for their consideration and consultation thereon as required by the
t of June 17, 1944, immediately upon receipt of your opinion as to its legality.
It is my opinion, and I find that the entering into and approval of this unit
greement will be in the interest of the United States and that the benefits and
nsiderations flowing to the Government are both adequate and substantial.
Your early consideration will be very much appreciated.
Sincerely yours,

M. E. ANDREWS,
Acting Secretary of the Navy.

Enclosures: (3).

APPENDIX E

JANUARY 3, 1949.

Ion. M. E. ANDREWS,
Acting Secretary of the Navy.

MY DEAR MR. SECRETARY: Reference is made to your letter of December 3,
ubmitting copy of a proposed unit agreement for the 27–B pool of the Buena
ista Hills oil and gas field in Naval Petroleum Reserve No. 2, Kern County,
alif., and certain correspondence incident thereto. Request was made for
eview of the agreement and advice as to whether, in my opinion from a nonlegal
tandpoint, the terms and conditions therein are sufficiently in the public interest
o warrant approval thereof by the Secretary of the Navy, with the consent of
he President.
The agreement substantially follows the principles incorporated in the unit
greement for the Gatchell zone of the Coalinga Nose oil and gas field, Fresno
County, Calif., the form of which was approved by this Department July 22, 1948.

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Commodore Greenman's memorandum of November 24, 1948, to you summarizes the case concisely and comprehensively and I concur in principle with the factual statements appearing therein. It appears that the purposes of unitization will be accomplished and that greater ultimate recovery of oil and gas will be realized with increased efficiency and economy, and with resultant prevention of waste. The interests of all parties, including the Government, appear to be adequately protected.

After review of the agreement, the following points are mentioned without recommendation or objectional inference, merely for your noting, as it is realized that changes you may not consider of serious import would be inadvisable at this late date:

1. The references in section 13 (b) of page 23 to "paragraph (a) of section 13" and to "paragraph (b) of this section" in line 2 of page 24 appear to be in error. Possibly reference is intended to the corresponding paragraphs of section 1(instead, as (a) of section 13 would nullify the "notwithstanding" language and (b) of section 13 would be unnecessary.

2. In section 21 of page 31, termination, except by unanimous consent, i subject to determination of "paying quantities" by the participants. The phras "as determined by the participants" was omitted from the Coalinga Nose agree ment.

3. Right of inspection in section 26 and obligation to furnish records in sectio 27 of page 34 are limited to participants. In the Coalinga Nose case a supple mental stipulation will be furnished by the participants agreeing to permi inspections and to furnish certain records to proper Government representative pursuant to similar sections.

Accordingly, in my opinion from a nonlegal standpoint, the terms and condi tions in the proposed unit agreement for the 27–B pool of the Buena Vista Hill oil and gas field are sufficiently in the public interest to warrant approval thereo by the Secretary of the Navy, with the consent of the President.

Sincerely yours,

J. A. KRUG,
Secretary of the Interior.

Enclosure 110.

APPENDIX F

FEBRUARY 1, 1949.

The honorable, the SECRETARY OF THE NAVY.

MY DEAR MR. SECRETARY: By letter of December 3, 1948, the Acting Secretar of the Navy submitted a proposed unit agreement for the 27–B pool of the Buen Vista Hills oil and gas field, Kern County, Calif., and requested my opinion a to its legality.

Subsequently, Commodore W. G. Greenman, Director, Naval Petroleu Reserves, acting upon certain suggestions made by the Secretary of the Interio in his letter to you of January 3, 1949, and other suggestions made in this Depart ment, submitted the following changes in the proposed unit agreement, which h states have been approved by the oil companies concerned:

(1) Section 13 (b) is changed to read as follows:

"(b) Notwithstanding anything to the contrary contained in this agreement and without prejudice to the right to the Participants to remove Operator b affirmative agreement in accordance with the provisions of paragraph (a) of thi section, Operator may be removed at any time by the unanimous agreement o all Participants, except Operator and any other Participants the greater part o whose stock is owned or controlled by Operator or which own or control th greater part of the stock of Operator."

(2) In section 17 (b), page 29, line 1, a period is to be inserted after the word "paid" and the following words eliminated: "such basis to be in lieu of any othe basis of computation now or hereafter provided by law or regulation."

(3) In section 21, the following words are to be eliminated: "as determined by the Participants".

With his letter of December 3, the Acting Secretary enclosed a copy of a opinion of the Judge Advocate General of the Navy dated December 2, 1948, i which he approved the proposed agreement as to legality, and the Office of th Judge Advocate General has advised me informally that he also approves th above-mentioned changes.

The proposed agreement sets forth in recital No. 8, as authority therefor, th following statutes:

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"Act of Congress of February 25, 1920 (41 Stat. 437), as amended by the amendtory Act of Congress of August 8, 1946 (60 Stat. 950); the Act of Congress of une 4, 1920 (41 Stat. 813), as amended by the Amendatory Acts of Congress of une 30, 1938 (52 Stat. 1252) and of June 17, 1944 (58 Stat. 280); and * * * ection 3301 of the Public Resources Code of California."

Section 3301 of the Public Resources Code of California provides for approval y the State oil and gas supervisor of agreements for the cooperative development nd operation of oil and gas fields, and I am informed that the proposed agreement as been submitted to him by the oil companies participating therein. I express o opinion concerning that phase of the matter.

I take note of the Acting Secretary's opinion and finding, as stated in this letter f submission, "that the entering into and approval of this unit agreement will e in the interest of the United States and that the benefits and considerations owing to the Government are both adequate and substantial." Based upon that nding and opinion, which will be subject to the scrutiny and review of the resident and of the Armed Services Committees of the Congress, and based also pon my examination of the applicable Federal statutes, it is my opinion that ie proposed agreement conforms with Federal law.

Sincerely yours,

PEYTON FORD,
Acting Attorney General.

APPENDIX G

SAN FRANCISCO, CALIF., *November 9, 1948.*

he honorable the SECRETARY OF THE NAVY,
Washington, D. C.

hrough: Director, Naval Petroleum Reserves.

Sir: The undersigned submit herewith for approval as to form the following opies of which are annexed hereto):

1. Unit agreement for the 27–B pool of the Buena Vista Hills oil and gas field, ern County, Calif. (proof of November 8, 1948).

2. Supplemental letter to be addressed to you by the participants under the unit greement.

The undersigned constitute all the participants named in the unit agreement; nd, upon approval as to form of the unit agreement and supplemental letter, the ndersigned will execute definitive counterparts thereof and thereafter place the nit agreement in effective operation in accordance with its terms.

Respectfully submitted.

STANDARD OIL CO. OF CALIFORNIA,
By F. S. BRYANT, *Vice President,*
TIDE WATER ASSOCIATED OIL CO.,
By THOS. L. WARK, *Vice President,*
HONOLULU OIL CORP.,
By L. A. CRANSON, *Vice President,*
UNION OIL CO. OF CALIFORNIA,
By SAM GRINSFELDER, *Vice President,*
MURVAALE OIL CO.,
By J. E. TOUSSAINT, *Vice President.*

APPENDIX H

NAVY DEPARTMENT,
OFFICE OF THE DIRECTOR, NAVAL PETROLEUM RESERVES,
Washington 25, D. C., February 2, 1949.

MEMORANDUM

ubject: Concise statement of the accomplished unit agreement for the 27–B pool of the Buena Vista Hills oil and gas field (Naval Petroleum Reserve No. 2) in California.

(*a*) The 27–B pool is a separate pool of oil lying stratigraphically lower than e other pools in Naval Petroleum Reserve No. 2 which have been producing r many years.

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(*b*) The land overlaying this pool comprises 6,755 acres, of which 3,995 acres are owned in fee and the remainder by four Government leases.

(*c*) Each operator in this pool is now producing oil from the pool competitively without regard for the other's interests. This practice, if continued, will soon so deplete pressures in the pool as to cause deterioration of the entire pool, and will result in substantial losses to all concerned.

(*d*) This unit agreement operates to segregate the 27–B pool from the pools above or below it, and provides for its operation as a unit under one operator with all participating parties sharing production and costs on the basis of participating percentages. This is the only means by which the greatest ultimate recovery of production can be assured.

(*e*) In addition, a gas-injection program is required under this agreement which will restore reservoir energy to the pool which energy has been inordinately reduced by present competitive operations. This injection program is designed to extend materially the productive life of the field.

(*f*) The agreed-to percentages of participation are as follows:

	Percent
Standard	77. 74578
Tide Water Associated	9. 70687
Honolulu	7. 86180
Murvale	2. 95748
Union	1. 72807

On this basis, Government lessees will participate in production to the extent of 19.17775 percent. This is extremely advantageous to the Government because it is a greater percentage of the remaining oil than the lessees can expect to produce under competitive operation by approximately 73 percent, not to mention the lessee's share of additional production incident to the gas injection program.

(*g*) Under this agreement, the Government will receive a 12.9-percent royalty on all oil produced from the 27–B pool allocated to Government leases (19.17775 percent of total production from the pool) which is greater than the average royalty now received from all pools under the individual leases. This higher royalty will continue for the life of the field and is of additional advantage because it will apply to all oil recovered by the lessee incident to the repressuring program which will amount to an estimated 5,000,000 barrels.

There is adequate legal consideration and substantial benefits will flow to the United States when this unit agreement is executed as it will—

(1) Assure the Government receipt of royalty on a larger percentage of the oil to be produced from the pool than it would otherwise receive under competitive operations.

(2) Assure the Government that the lands (both Government and privately owned) will be operated in accordance with sound and efficient oil-field practices, and assure a greater ultimate recovery of oil from the pool.

(3) Provide a method of arbitration to determine production rates from the pool, if it appears to the Secretary of the Navy that the pool is not being operated in accordance with sound and efficient oil-field practices to obtain ultimately the economic maximum recovery of oil, gas, and associated hydrocarbons from the pool. (The Secretary of the Navy presently has no such right with respect to the privately owned lands nor has he any effective control over the quantity and rate of production under the leases on the Government lands which will be made subject to the unit agreement.)

In addition, the United States is not required to pay any of the costs of developing and operating the pool, as all such costs will be borne by the lessees of the Government and the owners of the private lands who are participants under the unit agreement.

The Secretary of the Interior finds the agreement in the public interest; the Judge Advocate General of the Navy and the Attorney General have approved it as to legality, and the Secretary of the Navy finds that the benefits and considerations flowing to the Government are both adequate and substantial, and recommends its approval.

W. G. GREENMAN,
Commodore, United States Navy,
Director, Naval Petroleum Reserves.

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nalysis of effect to the advantage of the Government of the proposed 27–B pool unitization as compared with present competitive operations, based on production proposed from unitized area for month of December 1948

ı) Present competitive operations, December 1948:		
(1) Total production from proposed unitized area	barrels per month	948, 759
(2) Production from Navy leases in unitized area	do	86, 117
(3) Percentage of total production from Navy leases	percent	9. 08
(4) Royalty on production from Navy leases at 12½ percent	barrels per month	10, 752
(5) Royalty value at $2.54 per barrel		$27, 310
) Assuming pool operated on unitized basis for month of December:		
(1) Total production from proposed unitized area	barrels per month	948, 759
(2) Production allocated Navy leases unitized area	do	181, 950
(3) Percent of total production allocated Navy leases	percent	19. 178
(4) Royalty on production Navy leases at 12.9 percent	barrels per month	23, 472
(5) Royalty value at $2.54 per barrel		$59, 619
(6) Increase in royalty over competitive basis	barrels per month	12, 720
(7) Percent increase in royalty over competitive basis	percent	118. 3
) Estimated total recoverable oil from pool:		
(1) Under competitive operations	barrels	40, 000, 000
Lessee's share (9.08 percent)	do	3, 632, 000
Government's royalty (12½ percent of lessee's share)	do	454, 000
Value at $2.54 per barrel		$1, 153, 160
(2) Under unitized operations	barrels	60, 000, 000
Lessee's share (19.17775 percent)	do	11, 506, 650
Government's royalty (12.9 percent of lessee's share)	do	1, 484, 358
Value at $2.54 per barrel		$3, 770, 269
) Acreage and wells in unitized area:		
(1) Total productive acreage in unitized area	acres	3, 922
(2) Acreage owned by private interests (all but 80 acres owned by Standard Oil Co.)	acres	2, 746
(3) Acreage owned by Government	do	1, 176
(4) Percent acreage owned by Government	percent	30
(5) Leases involved	number	6
(6) Total wells in pool	do	172
(7) Wells, Government leases	do	44
(8) Wells, private land (all but 4 wells owned by Standard Oil Co.)	do	128

Appendix J

roposed Unit Agreement for the 27–B Pool of the Buena Vista Hills Oil and Gas Field, Kern County, California

This Agreement, made and entered into this _____ day of _____, 948, by and between the signatory parties hereto, each of whom is hereinafter alled "Participant,"

Witnesseth:

RECITALS

1. This agreement relates to and affects those certain lands located in Kern ounty, California, which are hereinafter referred to as the "Area" and which are ndicated by the area circumscribed by the heavy black line on the map attached ereto, marked Exhibit "A", and hereby made a part hereof.

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2. The lands which comprise the Area and the respective interests of the Participants in and to such lands are more fully described and identified in the table which is attached hereto, marked Exhibit "B", and hereby made a part of this agreement.

3. Participants who are the lessees under the U. S. Government leases covering lands of the United States within the Area are also parties to that certain "Plan-Agreement for Cooperative Development of Lands of the United States in Buena Vista Hills Oil and Gas Field, Kern County, California," dated October 1, 1935 (NOd–795–I–Sec. 187).

4. Participants are also parties to that certain "Plan for Cooperative Development of the Buena Vista Hills Oil and Gas Field, Kern County, California," dated October 1, 1935.

5. The "27-B Pool," hereinafter defined, is a part of the "Old Pool," as defined in such Plan for Cooperative Development.

6. This agreement, except as it applies to the 27–B Pool, shall not affect the "Old Pool" as defined in said Plan-Agreement and in said Plan, or its development and operation as set forth therein.

7. Participants, with the approval of the United States of America as to lands owned by it and subject to the U. S. Government leases, desire to enter into this agreement for the control of pressures in the 27–B Pool and for the purpose of endeavoring to obtain the maximum economic ultimate recovery of oil, gas, natural gasoline, and associated hydrocarbons therefrom, without waste as defined in this agreement.

8. Statutory authority for this agreement is to be found in the Act of Congress of February 25, 1920 (41 Stat. 437), as amended by the amendatory Act of Congress of August 8, 1946 (60 Stat. 950); the Act of Congress of June 4, 1920 (41 Stat. 813), as amended by the Amendatory Acts of Congress of June 30, 1938 (52 Stat. 1252) and of June 17, 1944 (58 Stat. 280); and in Section 3301 of the Public Resources Code of California.

NOW, THEREFORE, Participants, in consideration of the premises and of the mutual undertakings herein contained, do hereby agree as follows:

SECTION 1. UNITIZATION—CONSERVATION

The rights of Participants to develop and operate in and to produce from the 27–B Pool oil, gas, and associated hydrocarbons, and the oil, gas, and associated hydrocarbons in the 27–B Pool, and produced therefrom, are hereby unitized, to the end that the 27–B Pool shall be developed and operated as a unit by a single operator. All operations conducted under this agreement, upon lands subject hereto and which relate to or in any way affect the 27–B Pool, shall be conducted so as to endeavor to obtain the maximum economic recovery of oil, gas, and associated hydrocarbons from such 27–B Pool in accordance with sound oil field engineering practices and without waste as defined in this agreement.

SECTION 2. DEFINITIONS

For the purpose of this agreement, the terms herein used are defined as follows:

(a) AREA shall mean that portion of the Buena Vista Hills Oil and Gas Field which, as shown on the map attached hereto marked Exhibit "A", is encompassed by the heavy black line or by any extension or extensions thereof made in the manner hereinafter provided.

(b) 27–B POOL shall mean and include the series of sands and shales commonly designated as "Basal Etchegoin Sands." Such sands are more specifically identified as the E_1, E_2 (E_2 and E_3 sands combined as a single member), and E_4 sands existing between the E_1 point and the base of the E_4 sand as shown on the electric logs of the wells listed on Exhibit "D" attached hereto. The base of the "Basal Etchegoin Sands" is above the basal limit of the "Old Pool" as defined in the "Plan for Cooperative Development of the Buena Vista Oil and Gas Field, Kern County, California," referred to in Recital 4 hereof.

(c) LESSEE or OWNER shall mean the owner of the right to develop, operate, and produce oil, gas, natural gasoline, and associated hydrocarbons, whether as lessee or otherwise, and, therefore, shall include the owner of lands not under lease. Such terms shall refer to the Participant owning such right at the time when said lands originally became subject hereto, and to its successors and assigns.

(d) OPERATOR shall mean the Participant who at any time is designated to construct, maintain, operate, and repair the central crude-oil storage and the pressure-maintenance plant or plants and other jointly-owned equipment and

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ilities and to drill, redrill, operate, and repair wells and to perform such other ties as are provided in this agreement. Such term shall refer not only to the ginal Operator but also to any successor of Operator selected by the Partici- nts as herein provided, unless a contrary intention is indicated in the context.

(e) PARTICIPANTS shall mean the Lessees and Owners of lands within the Area o execute this agreement as Participants, and shall also mean successors and igns of any of them.

f) PARTICIPATING EQUITY shall mean each Participant's percentage share of ude oil and wet gas, as such percentage share shall be determined under the visions of this agreement.

g) ACCOUNTING PROCEDURE shall mean the accounting procedure set forth l provided for in a supplemental agreement between the Participants, entered o of even date herewith.

h) ACRE-FOOT shall mean one acre, one foot thick, of oil and/or gas bearing mations in the 27–B Pool determined by the Participants to be productive of or gas.

i) CRUDE OIL shall mean all liquid hydrocarbons produced and saved from 27–B Pool and delivered into the central crude-oil storage facilities for dis- ution among the Participants as herein provided.

j) WET GAS shall mean all gas produced and saved from the 27–B Pool pur- nt to this agreement (including field tank vapors and gasoline drips).

k) RESIDUAL DRY GAS shall mean that portion of WET GAS produced and ed from the 27–B Pool which remains after the extraction of natural gasoline l or other liquid hydrocarbons therefrom.

l) WASTE shall mean (i) such avoidable loss or destruction of oil, gas and ociated hydrocarbons after recovery as prevents the economic utilization reof, or (ii) avoidable inefficient or excessive use or dissipation of reservoir rgy resulting in substantial loss in maximum economic recovery of oil, gas l associated hydrocarbons which, in either case, shall be the approximate result cts or omissions which a reasonably prudent operator would not do or suffer remain undone under like or similar circumstances.

SECTION 3. PARTICIPATIONS IN PRODUCTION

a) On the attached map, Exhibit "A," in addition to the heavy black line which ws the Area, there is a dashed line which indicates the estimated location of exterior boundary of the 27–B Pool as of the date of discovery of oil and gas such pool. Such dashed line is hereinafter referred to as the composite pro- tive limits line of the 27–B Pool. The portion of the Area which has been de subject to this agreement within such dashed line is hereinafter referred to the initial participating area, and the lands which comprise such initial par- pating area are hereinafter referred to as initial participating lands.

b) In Exhibit "B" to this agreement are listed definitely described and num- ed tracts of land. Set opposite each such numbered tract is a figure which resents the estimated acre-feet of productive oil and/or gas sands which formed art of the 27–B Pool as of the date of discovery of oil and gas in such Pool, l which underlie the initial participating area of such numbered tract. Such res are hereinafter referred to as the initial acre-feet figures of the respective cts of land to which they refer.

c) Irrespective of any further information which may be obtained as a result additional drilling or other operations inside or outside the Area, the afore- ntioned figures representing the estimated acre-feet of productive 27–B Pool and or gas sands within the initial participating area of the numbered tracts and listed in Exhibit "B" hereto shall not be modified or altered in any respect ring the term of this agreement except with the unanimous consent of all rticipants and the approval of the Secretary of the Navy.

d) In addition to the initial acre-feet figures set opposite each of the afore- ntioned tracts of land, there is also set opposite each such numbered tract a centage value which represents the ratio between (1) the estimate acre-feet productive oil and/or gas sand which formed a part of the 27–B Pool as of the te of discovery of oil and gas in such Pool, and which underlie the initial par- pating area of that numbered tract of land, and (2) the total of such estimated e-feet underlying the initial participating area of all of the numbered tracts ich have been made subject to this agreement.

e) Subject to the further provisions of this agreement, of the total oil, gas, l other hydrocarbons produced and saved from the 27–B Pool pursuant to s agreement, there shall be allocated to each numbered tract the percentage presented, at the time of such allocation, by the percentage value set opposite

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such tract on Exhibit "B," or on any revision or revisions thereof. Such percentag values were determined by the Participants to reflect original reservoir condition in the 27-B Pool.

(f) Each Participant shall own a percentage of the total oil, gas, and oth hydrocarbons produced and saved from the 27-B Pool pursuant to this agreemen equal to the sum of the percentage values set forth in Exhibit "B," or in an revision or revisions thereof, opposite the numbered tracts which are owned o leased by such Participant. For convenience the sum of the percentage value which correspond to all lands of each Participant, hereinafter sometimes referre to as the "Percentage Participation" or "Participating Equity" of such Partic pant, is set forth in Exhibit "C," which is attached to this agreement and mad a part hereof. Upon any revision or revisions of Exhibit "B," Exhibit "C" sha also be so revised as to set forth the correct revised Participating Equities of th respective Participants.

(g) In the event any numbered tract listed on Exhibit "B" is now or hereafte becomes divided, or further divided, by a Participant owning or acquiring a interest as to only a part or portions of said numbered tract, the Percentag Participations or Participating Equities of the owners or lessees of such numbere tract, as the same are set forth in Exhibit "C" hereto, shall be adjusted in accor ance with the agreement between the persons who are the owners or lessees o interests in such numbered tract. In the absence of an agreement between th interested persons fixing the division of ownership, revision of the Participati Equities as set forth in Exhibit "C" and distribution of production from the 27-B Pool allocated to such numbered tract shall be made on a surface acreage basis irrespective of whether such division of ownership is separate or undivided.

SECTION 4. ENLARGEMENT OF AREA AND ADJUSTMENT OF INTERESTS

(a) It is recognized by the Participants that after the effective date of thi agreement additional wells drilled into the 27-B Pool on lands inside or outsid the Area may furnish data and information which will indicate that lands the inside or outside the Area, not proved to be productive on the effective date hereo are capable of producing commercial quantities of oil, gas, or other hydrocarbon from the 27-B Pool. Therefore, upon the completion of any commercially pro ductive well in the 27-B Pool within the period of two (2) years after the effecti date hereof, the Participants, during such two (2) year period and for sixty (60 days thereafter, may: (1) Determine that lands then outside the Area shall b included therein; or (2) with or without including additional lands within th Area, determine that additional acre-feet of productive oil and/or gas saturate sands, outside the composite productive limits line of the 27-B Pool, underli lands which have been made subject to this agreement. The affirmative agree ment of at least four (4) of the Participants representing in the aggregate no less than eighty-seven and one-half percent (87½%) of the total Participati Equities under this agreement shall be necessary to so enlarge the Area, or t determine that additional acre-feet of productive 27-B Pool oil and/or gas sat rated sands outside the composite productive limits line underlie the Area, e the Area as enlarged, or any part thereof. If any additional lands which a nominated for inclusion within the Area are leased or owned by a Participan such Participant shall be conclusively deemed to have agreed to the inclusio of such lands in the Area subject to this agreement. Notwithstanding th within two (2) years and sixty (60) days after the effective date hereof no Pa ticipant shall have requested inclusion of additional lands within the Area, determination that additional acre-feet of productive 27-B Pool sands outsi the composite productive limits line underlie the Area, or any part or par thereof, the Participants, prior to the expiration of such period of two (2) yea and sixty (60) days, shall meet and determine, upon the basis of informati derived from any additional wells drilled into the 27-B Pool during such two (year period, whether any such inclusion or additions shall be made.

(b) If the Area shall be enlarged by the addition of lands as aforesaid, th Participants shall define and describe such additional lands and shall revise th heavy black line on the map, Exhibit "A," so as to include such additional lan within the Area. The lands so added, plus the lands theretofore within the Are shall constitute thereafter the Area until such time as said Area is again enlarg as hereinbefore in this section provided.

(c) If within the aforementioned period of two (2) years and sixty (60) day the Participants determine that additional acre-feet of productive 27-B Po sands outside the composite productive limits line underlie any lands which a

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then subject to this agreement, they shall also determine the number of such additional acre-feet beneath each such tract of land.

(d) Any determination pursuant to paragraphs (a) and (c) of this section of the number of additional acre-feet of productive oil and/or gas saturated sands which form a part of the 27–B Pool outside of the productive limits line as shown on Exhibit "A" shall be based upon a sound interpretation, in accordance with good petroleum engineering practices, of the electric logs and other pertinent data and information obtained from all wells drilled into the 27–B Pool which have a bearing upon such determination. Such determination or redetermination shall be based upon a logical correlative weighting of the productive oil and/or gas saturated sands as to thickness throughout the entire area outside the composite productive limits line as shown on Exhibit "A," which is affected thereby, and shall reflect original reservoir conditions in the 27–B Pool.

(e) As soon as practicable after any determination, pursuant to Paragraphs (a) and (c) of this section, of the number of additional acre-feet of productive 27–B Pool sands outside the composite productive limits line and beneath any numbered tract or tracts of lands subject to this agreement, the Participants shall recalculate the Percentage Participation for each tract of land which has been made subject to this agreement. Such recalculation shall be based upon the initial acre-feet figures set forth in Exhibit "B" hereto, plus the number of additional acre-feet which shall have been added to any numbered tract or tracts in accordance with the provisions of Paragraphs (a) and (c) of this section. At such time the Participants shall also revise Exhibits "B" and "C" so that such exhibits shall respectively set forth the revised Percentage Participation for each numbered tract of land which has been made subject to this agreement and the revised Participating Equity of each Participant hereunder. Any such recalculation or revision of the Percentage Participations shall not become effective until approved by the Secretary of the Navy and, if and when so approved, shall be effective from seven o'clock a. m. of the first day of the calendar month next following the completion of the well which furnished the data indicating the necessity for enlargement of the Area or recalculation of the Percentage Participations. Operator shall make appropriate adjustments between the Participants to give effect to such recalculated Percentage Participations which, except to the extent hereinbefore specified, shall never have a retroactive effect and shall not require or permit any retroactive adjustment with respect to allocations of oil, gas, gasoline, and other hydrocarbons produced from the 27–B Pool prior to the effective date of such recalculation, or, except as provided in paragraph (g) of this section, of costs or expenses incurred prior to the effective date thereof.

(f) If on the effective date of this agreement any lands or tracts of lands within the Area shall not have been made subject to this agreement, then such lands or tracts of lands shall be disregarded in determining the percentage interests of the remaining tracts which are subject to this agreement, and the lands or tracts of lands not made subject to this agreement shall not be entitled to a Percentage Participation hereunder. Such omitted lands, or tracts of lands, may nevertheless thereafter be made subject to this agreement by the affirmative agreement of all Participants and execution of this agreement by the owner or lessee of such lands or tracts of lands, and, if any part or parts thereof shall be within the participating area, such part or parts shall become entitled to the Percentage Participation approved by all Participants and by the Secretary of the Navy, but such lands or tracts of lands shall receive no allocation of oil, gas or other hydrocarbons produced and saved from the 27–B Pool pursuant to this agreement until the first day of the calendar month following such execution of this agreement by the owner or lessee of such lands; provided however that such owner or lessee shall pay the other Participants its Participating Equity share of the development and capital costs incurred hereunder after the effective date of this agreement, and further provided that such owner or lessee shall meet such further terms and conditions as may be prescribed by the Participants. The Participants shall revise Exhibits "B" and "C" to conform to the provision of this paragraph (f).

(g) Within sixty (60) days after expiration of the first two (2) years of the term of this agreement an adjustment shall be made between the various Participants in such manner that after such adjustments each Participant shall have borne and paid its Participating Equity share, as established at the end of such two (2) year period, of the costs of acquisition and construction of the pressure maintenance plant and facilities and of the central crude oil storage facilities and other jointly-owned facilities constructed by Operator, including any injection

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wells drilled by Operator for the joint account of Participants during such two (2) year period.

(h) Except as provided in this section, the Participants shall have no power to recalculate or revise the Participating Equities of the Participants or the Percentage Participation assigned to any of the lands within the Area shown on Exhibit "A"; provided that the Participants may divide or consolidate interests to show changes resulting from transfers, assignments, or other disposition of interests.

(i) Anything herein to the contrary notwithstanding, the Participants shall have no power to reduce the Percentage Participation for any of the lands within the Area or the Participating Equity of any Participant by reason of the depletion of oil, gas, gasoline, or other hydrocarbons underlying any lands or the encroachment of water under any lands resulting from the depletion of the Area.

(j) Except as provided in paragraph (f) of this section no change in the Percentage Participation for any lands within the Area shall be made after two (2) years and sixty (60) days after the effective date of this agreement.

SECTION 5. PRESSURE MAINTENANCE PLANT AND FACILITIES

(a) Participants hereby authorize and direct Operator to commence, within six (6) months after the effective date of this agreement, the installation of gas injection compressors or a gas injection plant for the control of pressure in the 27–B Pool, and to prosecute such work with due diligence to completion, subject to the provisions of section 29 hereof. Such gas injection compressors or such gas injection plant shall have a capacity, upon completion of installation, of not less than 15 million cubic feet of Residual Dry Gas per day, and shall be installed in accordance with plans and specifications and estimates of cost to be prepared by Operator and approved by Participants. A copy of such plans and specifications, as approved by Participants, shall be filed with the representative of the Secretary of the Navy upon his request.

(b) Within six (6) months after the effective date of this agreement Participants shall determine an initial plan and method for the control of pressure in the 27–B Pool, including the operation of the gas injection compressors or gas injection plant to be installed as provided in paragraph (a) of this section; and from time to time thereafter Participants shall modify, supplement or terminate such plan and method or determine additional or other plans and methods for the control of pressure in the 27–B Pool to obtain ultimately the economic maximum recovery of oil, gas and other hydrocarbons. Upon determination by Participants of each such plan and method, or modification, supplement or addition thereto or termination thereof, Operator shall diligently proceed to carry the same into effect or terminate the same (as the case may be) as instructed by Participants. A copy of each such plan and method, or modification, supplement or addition thereto, shall be filed with the representative of the Secretary of the Navy and such representative shall be notified of the termination of any such plan and method.

(c) Each Participant shall bear and pay its share, in accordance with its Participating Equity, of the cost of constructing, operating, maintaining, repairing, and enlarging a pressure maintenance plant or plants located within the Area, together with gathering lines within the Area to deliver Residual Dry Gas or other substances used for pressure maintenance to the pressure maintenance plant or plants after processing, and injection lines to points of injection, as determined by the Participants to be necessary, which shall be jointly-owned equipment and facilities.

SECTION 6. CENTRAL CRUDE OIL STORAGE FACILITIES

(a) The cost of constructing, operating, maintaining, and repairing all facilities which the Participants shall agree to be necessary or convenient for the storing, handling, collection, measurement, and delivery to central storage facilities of the crude oil produced pursuant to this agreement from the 27–B Pool shall be borne by each Participant in the proportion of its Participating Equity, and all such facilities shall be jointly-owned by the Participants in the proportions of their respective Participating Equities. The aforementioned central crude oil storage facilities shall be located at one or more central points, or at such other place as shall be determined by the Participants and shall be constructed, operated, maintained, and repaired by Operator, and the cost thereof paid currently by Participants in accordance with their Participating Equities. All the aforementioned facilities shall be so constructed and operated that each Participant

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shall receive, as its percentage share, crude oil of as nearly as practicable like quality and gravity.

(b) Each Participant shall accept in kind its Participating Equity share of the crude oil produced and saved and delivered into the central crude oil storage facilities, and at its own cost and expense shall provide all facilities for accepting delivery thereof from the central storage facilities, and shall make its own arrangements with the Operator to accept delivery thereof from such storage facilities. Such crude oil shall be divided in such manner that each Participant shall received crude oil of as nearly as practicable like quality and gravity to that received by the other Participants, and, if such division is impracticable, a method of making monthly adjustments to equalize the division of crude oil shall be agreed upon by Participants and placed in active operation by Operator.

(c) If Participants so elect, they may establish and revise at any time or from time to time a schedule of charges which shall be made against any Participant who, without having first obtained the consent of the other Participants, permits any portion of its share of crude oil to remain stored in the central crude oil storage facilities for a period in excess of fifteen (15) days. Any sum or sums so paid as storage charges shall be divided among the Participants in accordance with their respective Participating Equities.

(d) No Participant shall have any preferential right to purchase any portion of any other Participant's share of the crude oil produced, provided, however, that if at any time or times the share of any Participant of the total amount of crude oil then in the central crude oil storage facilities, shall exceed such Participant's share of the total amount of crude oil produced and saved and run into the central crude oil storage facilities during the preceding fifteen (15) days, the Operator shall notify such Participant to accept delivery from such central crude oil storage facilities of that portion of its share of the oil then in storage which exceeds its share of the total amount of crude oil produced and saved and run into the central storage facilities during the preceding fifteen (15) days. If within three (3) days after receipt of such notice, the Participant so notified shall not have accepted delivery from such central crude oil storage facilities of a quantity or quantities of crude oil sufficient to reduce its share of the crude oil then in such central crude oil storage facilities to an amount not in excess of its share of the total crude oil produced and saved and run into such central crude oil storage facilities during the preceding fifteen (15) days, the Operator shall have the right, and is hereby authorized by each Participant, to accept delivery from such central crude oil storage facilities for the account of the Participant so notified and to sell at the posted field price, for the account of such Participant, a quantity or quantities of crude oil sufficient to reduce such Participant's share of the crude oil then in storage to an amount not in excess of its share of the total oil produced and saved and run into such central crude oil storage facilities during the period of fifteen (15) days immediately preceding such delivery and sale.

SECTION 7. HANDLING OF GAS

(a) Each Participant shall take in kind its Participating Equity share of the wet gas produced and saved from the 27–B Pool and shall make its own arrangements for the processing for removal of liquid products from its share of wet gas so produced and saved. The wet gas so delivered to each Participant shall be as nearly as practicable of the same quality and liquid hydrocarbon content as that delivered to each of the other Participants.

(b) Each Participant shall arrange to return currently to Operator a quantity or quantities of gas equal to seventy-five percent (75%) of the volume of wet gas currently produced and saved from the 27–B Pool and delivered to such Participant for removal of liquid products. The gas so to be returned may be either Residual Dry Gas remaining after processing of wet gas produced from the 27–B Pool or any other dry gas of suitable quality, as determined by the Participants. The dry gas so returned to Operator shall be delivered within the Area into the injection plant intake lines or at the intake of the pressure maintenance plant or plants, at a pressure of not less than seventy (70) pounds per square inch; provided, however, that fur use as fuel in connection with any operation hereunder, Operator may take delivery of all or any part of such dry gas at the extraction plant or plants of any Participant or at any point on the intake line or lines between such extraction plant and the pressure maintenance plant.

(c) If at any time or from time to time the Participants determine that gas, in addition to that provided for in paragraph (b) of this section, or any other substance, is required for control of pressures in the 27–B Pool, Operator, for the

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joint account of the Participants, in the proportion of their respective Participating Equities, shall purchase such additional quantity or quantities of dry gas and/or other substances at a price not in excess of that authorized by Participants.

(d) Whenever mechanical difficulties prevent the injection of Residual Dry Gas, or if the Participants at any time or times determine that the division of Residual Dry Gas will not adversely affect the accomplishment of the purposes of this agreement, such Residual Dry Gas need not be returned to Operator for injection.

(e) If any gas is injected into the 27–B Pool which was not originally produced therefrom, then gas produced and sold during the term of this agreement, but not thereafter, shall be deemed to be that injected gas on a last in first out basis, and (a) if such gas is injected currently pursuant to paragraphs (b) and (c) of this section 7 in substitution for Residual Dry Gas of any Participants upon which royalty is paid, no royalty shall accrue or be paid on gas allocated to and sold by such Participant (except royalty on products extracted therefrom) unless and until there shall be allocated to and sold by such Participant a quantity of gas equal to one hundred percent (100%) of the amount of such substitute gas, and (b) if such gas is not injected as substitute gas, no royalty shall accrue or be paid on gas allocated to and sold by the Participant furnishing such gas (except royalty on products extracted therefrom) unless and until there shall be allocated to and sold by such Participant a quantity of gas equal to eighty-seven and one-half percent (87½%) of the amount of such injected gas.

SECTION 8. WELLS, EQUIPMENT AND FACILITIES

(a) On the effective date of this agreement each Participant shall deliver to Operator exclusive possession of all its wells which have theretofore been completed in the 27–B Pool and which are capable of producing oil, gas, gasoline, or other hydrocarbons from the 27–B Pool, and such other wells then completed in the 27–B Pool as Participants shall determine are or will be required for operations hereunder. Each well capable of producing which is so delivered to Operator shall be equipped with proper equipment, including well valves and control equipment for the operation thereof in accordance with good oil field practice, and shall also be equipped with artificial lifting equipment if the same is required for proper operation of such well. The equipment so to be delivered to Operator shall not include any oil or gas well derricks. Any additional wells within the Area which on the effective date of this agreement are being drilled by any Participant and which are thereafter completed in the 27–B Pool and which are or become capable of producing oil, gas, gasoline, or other hydrocarbons from the 27–B Pool, shall, upon their completion, be also delivered with proper equipment to the exclusive possession of Operator for operation thereof.

(b) On the effective date of this agreement, each Participant shall deliver to Operator exclusive possession of such equipment and facilities as are necessary and proper for the normal operation of the wells delivered to Operator by such Participant, and for segregating from other production and normal handling on the property of such Participant all oil, gas, and other hydrocarbons produced from such wells, all as determined by Participants. Such equipment and facilities shall be fully installed and in good operating condition and working order, and at the time of delivery to Operator shall be adequate to segregate from other production and to handle on the property of such Participant all oil, gas, and other hydrocarbons currently produced from the wells delivered to Operator by such Participant. Delivery of such equipment and facilities shall be accomplished by presentation to Operator of an inventory containing a complete description of such equipment and of its location.

The equipment and facilities so to be delivered to Operator shall not include any facilities which are used by any Participant for storage or removal of oil, gas, and other hydrocarbons from the field, or any drilling equipment, camps, yards, warehouse stocks, gasoline extraction plants, or any equipment or facilities used exclusively in connection with production from a sand or zone other than those which are herein defined as comprising the 27–B Pool.

(c) It is recognized that certain items of equipment and facilities located upon the lands of the respective Participants are used not only in producing the 27–B Pool and handling production therefrom, but are also used in producing and handling production from zones or sands other than the 27–B Pool. Such circumstance shall not relieve any Participant from the obligation set forth in paragraph (b) of this section to deliver to the Operator, on the effective date of this agreement, such equipment and facilities as are necessary and proper for the

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normal operation of the wells delivered to Operator by such Participant, and for the segregation from other production and normal handling on the property of such Participant of all oil, gas, and other hydrocarbons produced from such wells. Each Participant who is the owner of equipment and facilities which are used for producing and handling production from both the 27–B Pool and other zones or sands may, at its election, retain all or any part or parts of the equipment or facilities so used, and, prior to the effective date of this agreement, replace the same with, or substitute therefor, such other equipment and facilities as shall be necessary and proper for operation of those wells which are to be delivered by it to Operator pursuant to this agreement, and for segregating from other production and handling on the property of such Participant all oil, gas, and other hydrocarbons produced from such wells.

(d) During the first two (2) years after the effective date of this agreement, except as provided in paragraph (f) of this section, the Participants shall not authorize the drilling of any wells to the 27–B Pool at the joint expense of the Participants, unless all Participants shall agree thereto; provided, however, that during such two (2) year period, any Participant owning lands or operating rights upon lands which have been made subject to this agreement, at its own cost and expense, and at any location at which a well might be drilled in accordance with the well-spacing pattern for the 27–B Pool, as shown on the plat attached hereto, marked Exhibit "E" and made a part hereof, may drill an additional well or wells for the purpose of producing oil, gas, or other hydrocarbons from the 27–B Pool. If any well or wells so drilled by any Participant shall be capable of producing oil, gas, or other hydrocarbons from the 27–B Pool, then, upon completion thereof, the owner of such well or wells, without charge to the Participants for the cost of drilling, completing, and equipping such well or wells, shall deliver to Operator exclusive possession of such well or wells and of such equipment and facilities as shall be necessary and proper for the normal operation thereof and for segregating from other production and handling on the property of such Participant all oil, gas, gasoline, and other hydrocarbons produced and saved from the 27–B Pool by or through such well or wells.

(e) After two (2) years after the effective date of this agreement, the Participants hereunder may elect to drill and equip additional wells within the Area for production of oil, gas, gasoline, or other hydrocarbons from the 27–B Pool. In such event any such well or wells shall be drilled by Operator at a location or locations agreed upon by Participants, and the cost and expense of all wells so agreed upon and so drilled shall be borne by all Participants hereunder in the proportion of their respective Participating Equities. Except with respect to the drilling and equipping during the first two (2) years after the effective date of this agreement of additional wells for the purpose of producing through such wells oil, gas, or other hydrocarbons from the 27–B Pool, the provisions of this paragraph (e) shall not be deemed or construed to prohibit or restrict in any way or at any time the right of Operator hereunder, subject to all the other terms and provisions of this agreement, to redrill, deepen, repair, or rework any well or wells or to perform any of the acts or duties or to exercise any of the rights which pertain to Operator hereunder.

(f) At any time or times after the effective date of this agreement, the Participants hereunder may elect to drill and equip additional wells within the Area for the purpose of injecting gas or other substances into the 27–B Pool, or the Participants may elect to repair, alter, or convert to an injection well any well or wells theretofore drilled to the 27–B Pool on any lands subject to this agreement. In such event any such well or wells shall be drilled and equipped, or repaired, altered, or converted by Operator, and the cost and expense of such operation shall be borne by all Participants hereunder in the proportion of their respective Participating Equities.

(g) If, pursuant to section 4 of this agreement, the Area shall be enlarged to include additional lands, or if any lands within the area which were not made subject to this agreement on the effective date thereof are thereafter made subject hereto, the owners or lessees of such lands, without charge to the Participants hereunder for the cost of drilling, completing, and equipping the well or wells which are located upon such lands and which are capable of producing oil, gas, gasoline, or other hydrocarbons from the 27–B Pool, shall deliver to Operator exclusive possession of such well or wells and shall also deliver to Operator exclusive possession of such equipment and facilities, including well valves, control equipment, and artificial lifting equipment, if the same is required, as shall be necessary and proper for the normal operation of such well or wells and for segregating from other production and handling on the property of such Participant

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all oil, gas, gasoline, and other hydrocarbons produced and saved from the 27–B Pool by or through such well or wells.

(h) All the wells, equipment, and facilities delivered to the exclusive possession of Operator in accordance with paragraphs (a), (b), (c), (d), and (g) of this section 8, and all wells drilled and equipped pursuant to paragraphs (e) and (f) hereof, shall be "jointly-owned equipment and facilities" and each Participant shall own an undivided interest in all such jointly-owned equipment and facilities equivalent to its Participating Equity.

(i) At such time as any additional plants, facilities, or equipment are acquired or installed upon the participating lands at the joint expense of the Participants, such additional plants, facilities, and equipment shall become jointly-owned equipment and facilities, and each Participant shall own an undivided interest therein equivalent to its Participating Equity.

SECTION 9. DIVISION AND PAYMENT OF OPERATING COSTS

(a) Subject to all the terms, conditions, and limitations of this agreement, and in the manner and proportions herein set out, each Participant agrees and obligates itself to pay its share, in accordance with its Participating Equity, of all costs and expenses incurred by Operator during each month incident to the development and operation of the 27–B Pool, including (but not by way of limitation) all costs and expense of drilling, testing, completing, reworking and equipping wells, pursuant to the provisions of paragraphs (e) and (f) of section 8 of this agreement; and all costs and expenses incurred in operating and in producing and saving oil, gas, and other hydrocarbons from wells subject to this agreement; and all costs and expense incurred in planning, erecting, constructing, equipping, and operating the central crude-oil storage facilities and the pressure maintenance plant or plants and injection lines appurtenant thereto, and in returning gas or other substances to the formations.

(b) All costs and expense for development and operations shall be accounted for in accordance with the Accounting Procedure.

(c) To secure the payment of any indebtedness owing from any Participant to Operator under the terms of this agreement, Operator is hereby granted a lien upon the interest of each defaulting Participant in the pressure maintenance plant and system, and upon the interest of the defaulting Participant in all oil, gas, and other hydrocarbons produced at any time from the Area, except so much thereof as shall be necessary to satisfy the current royalty obligations of such Participant under any lease or contract affecting lands within the Area. The Operator may enforce collection of such indebtedness by foreclosure of the lien at any time after there has been a default in payment for more than thirty (30) days. In addition to the right to foreclose the lien, the Operator shall also have the right to withhold from delivery to such Participant and to segregate and sell for the best price obtainable in the open market such quantity or quantities, not in excess of the share of such Participant, of oil and other hydrocarbons produced hereunder (except gas), as shall be sufficient to pay the amount of such indebtedness, and shall also have the right to bring any action or proceedings to enforce collection of such amounts without foreclosure and sale. If within six (6) months following the date of any such delinquency, Operator shall have been unable to secure reimbursement for such indebtedness in the manner above provided, each Participant shall contribute to the reimbursement of Operator for the amount of such delinquency in the ratio which such Participant's interest bears to the aggregate interests of all Participants (excepting the interest of the defaulting Participant) and shall thereupon be proportionately subrogated to Operator's rights under this paragraph. If the defaulting Participant is a lessee of the United States the Operator shall promptly advise the designated representative of the Secretary of the Navy and of any action contemplated by it.

(d) It is recognized that after the effective date of this agreement expenditures of large sums of money during each calendar month in connection with construction, operation, maintenance, and repair of central crude-oil storage facilities and pressure maintenance plant or plants will be necessary and, accordingly, Operator, at its election, may require the Participants to advance their respective proportions of all estimated costs in accordance with the following conditions: On or before the end of each quarter of the calendar year, Operator shall submit to Participants for their approval an itemized statement of such estimated costs for the succeeding quarter, which approval or disapproval shall be made within fifteen (15) days after receipt of such estimate by Participants. If any Participant fails to notify Operator of its disapproval of such estimate within the time herein specified, it shall be conclusively presumed that such Participant has

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approved such estimate. If a Participant disapproves such estimate, a meeting of Participants shall be called by Operator and Participants shall thereupon determine and approve a proper estimate. Within fifteen (15) days thereafter each Participant shall pay to Operator such Participant's Participating Equity share of such estimate.

SECTION 10. DESIGNATION OF OPERATOR

(a) Standard Oil Company of California is hereby designated as Operator for a period of twenty-four (24) months and thereafter until it resigns as such or is removed by Participants as hereinafter provided.

(b) Operator shall have the right to resign as Operator, which resignation shall become effective six (6) months after written notice to Participants of such resignation; and within the six (6) months' period the Participants shall select one of the other Participants as Operator. If, pursuant to paragraph (a) of this section 10, Participants shall elect to remove Operator, such Operator shall receive from Participants six (6) months' written notice of its removal. Participants shall then select a new Operator, who shall continue as Operator for a period of eighteen (18) months and thereafter until six (6) months after written notice to it by Participants of the selection of one of the other Participants as Operator. The Secretary of the Navy shall be notified promptly in writing of any contemplated change of Operator.

SECTION 11. DUTIES OF OPERATOR

Operator shall perform all the acts and operations which are expressly charged or confided to it by this agreement and, with respect only to the 27–B Pool, shall do and perform such other acts and operations as shall be necessary and proper to comply with the lessees' obligations under U. S. Government oil and gas leases, as amended and conformed to this agreement, except as otherwise provided in sections 16 and 17 hereof.

Operator shall have full and complete control over the construction, operation, maintenance and repair of the central crude oil storage facilities and the pressure maintenance plant or plants in all matters not specifically reserved for determination by Participants.

Subject to the directions and instructions of Participants, and in accordance herewith, Operator, in addition to the matters hereinbefore set forth, shall perform such other acts and operations (except such as are expressly reserved to Participants by this agreement) as shall be necessary or convenient for development, maintenance, and operation of the 27–B Pool, including (but not by way of limitation) the drilling and equipping of development and/or injection wells authorized by this agreement; the performance of repairs, maintenance, and remedial work upon all wells subject to this agreement; the construction, installation, operation, repair and maintenance of plants and facilities on lands subject hereto for pressure maintenance by use of gas or other substances, or for gas recycling; the installation, operation, repair, and maintenance of jointly-owned pumps, warehouses, buildings, water development and disposal systems, power and telephone lines, pipe and gathering and distributing lines and storage facilities within the Area, and the abandonment and dismantling of development wells and other jointly-owned plants, facilities, and equipment on lands subject to this agreement.

(b) Notwithstanding the provisions of paragraph (a) of this section 11, within ten (10) days after receipt from Operator of any advance estimate of costs and expenditures for the drilling of any well or wells or for construction of any plant or other facilities of a permanent nature, any Participant may submit a contract bid, either for its own account or for a financially responsible contractor regularly engaged in the business, for the performance of such work. If any submitted contract bid is less than the cost estimated by Operator, then Operator shall drill such well or perform such other work at the lowest submitted bid or enter into a contract therefor with the person submitting the lowest bid.

SECTION 12. DEVELOPMENT OF OTHER ZONES

(a) This agreement shall affect only the 27–B Pool and nothing herein shall be construed as affecting or in any manner relating to interests, rights, or obligations in any formation or strata underlying the Area other than the 27–B Pool.

(b) Each Participant, upon lands of which it is the lessee or owner, shall have the right to develop and produce oil, gas, and other hydrocarbons from zones or

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strata other than the 27–B Pool, together with the right to occupy and use the surface of such lands for any and all purposes not inconsistent with this agreement, which use of the surface by such Participant shall be so limited as not to interfere with the well-spacing pattern for the 27–B Pool. In drilling any well through the 27–B Pool, or in deepening, abandoning, plugging back, or completing in the 27–B Pool any well which has been drilled through such pool, each Participant agrees to take such steps as shall be designated by Participants for the purpose of protecting the 27–B Pool, or, if the Participant effecting such operations is for any reason not willing to adopt the specific measures designated by Participants, the protective measures proposed by a majority of the Participants and those proposed by the Participant effecting such operations shall be referred to the Division of Oil and Gas of the Department of Natural Resources of the State of California, and the decision of that Division shall be conclusive of the matter so decided, provided that with respect to lands of the United States all applicable requirements of the Operating Regulations must be complied with in any event.

(c) Upon election by Participants to abandon any jointly owned well or wells, or upon determination by Participants that any such well has ceased to be of value for the operations contemplated by this agreement, the Participant upon whose lands any such well is located shall have the right, within fifteen (15) days after written notice of such election or determination, to elect to take over such well for any purpose not inconsistent with or detrimental to the operation under this agreement.

If any Participant shall elect to take over any well or wells theretofore delivered to Operator pursuant to the provisions of paragraphs (a) or (d) of section 8 hereof, no charge shall be made to such Participant for such well or for or on account of the salvage value of its casing or other equipment. In the case of any well or wells drilled and equipped at the joint cost and expense of Participants hereunder, the Participant so taking over the same shall pay to each of the other Participants its Participating Equity share of the reasonable salvage value, which shall be determined as provided in the Accounting Procedure, of the casing and other equipment of such well or wells.

Upon election by any Participant to take over any jointly owned well as aforesaid, each of the other Participants shall transfer and assign all its interest therein to such Participant, and such Participant at its sole cost and expense shall take such steps as shall be designated by Participants for the purpose of protecting the 27-B Pool.

SECTION 13. DETERMINATIONS BY PARTICIPANTS

(a) Except as otherwise provided herein, all questions arising hereunder and determinations made hereunder shall be resolved and/or made by affirmative agreement of at least four (4) of the Participants representing in the aggregate not less than eighty-seven and one-half percent (87.5%) of the total Participating Equities under this agreement, and all matters so resolved or so agreed upon or consented to shall be binding upon all the Participants.

(b) Notwithstanding anything to the contrary contained in this agreement, and without prejudice to the right to the Participants to remove Operator by affirmative agreement in accordance with the provisions of paragraph (a) of this section, Operator may be removed at any time by the unanimous agreement of all Participants, except Operator and any other Participants the greater part of whose stock is owned or controlled by Operator or which own or control the greater part of the stock of Operator.

(c) Meetings of representatives of Participants shall be held in the offices of Operator, unless some other meeting place shall be designated by Participants.

SECTION 14. ADMINISTRATION OF OPERATIONS

Subject to the limitations set forth in this agreement, Participants shall:

(a) Decide all matters relating to removal and replacement of Operator designated in section 10 hereof; provided, that upon any proposed removal of Operator, Participant then acting as Operator shall be given written notice of the action of Participants in electing to remove such Operator at least six (6) months prior to such removal.

(b) Determine a plan and method for the control of pressures in the 27–B Pool and determine the exact nature and size of any plants, facilities, and equipment to be installed to effectuate such control of pressures and the method of operation thereof, subject, however, to the provisions of section 5 hereof.

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(c) Determine at any time and from time to time whether measures other han or in addition to those contemplated by section 5 of this agreement shall be dopted in order to obtain the maximum economic recovery of crude oil from ie 27–B Pool.

(d) Determine the nature, size, locations, and method of operation of the ntral crude oil storage facilities or other arrangements for handling such crude il and determine the method of division of the crude oil among the Participants accordance with their Participating Equities in such manner that each Parcipant shall receive crude oil of as nearly as practicable like quality and gravity that of the other Participants.

(e) Determine, on the basis of good oil field practices, rates of production from ie 27–B Pool, the particular wells from which crude oil and wet gas shall be oduced, the rates of such production, and the particular wells which shall be ed for injection purposes. Production from the 27–B Pool shall be maintained the maximum good operating rates, as determined by Participants from time time in accordance with sound oil field engineering and production practices, as to endeavor to obtain the maximum economic recovery of crude oil from ie pool: provided that the average daily rate of oil production per month shall ot be less than 15,000 barrels per day during the first two (2) years after the fective date hereof, and shall thereafter be not less than the average daily rate termined for each year by Participants. If Participants are unable to agree on the average daily rate of oil production for any year after the first two (2) ars, such production shall be maintained at the average daily rate determined r the previous year until such time as Participants are able to so agree.

(f) Determine from time to time the quantities of gas or other substances quired to be injected to control pressures in the 27–B Pool, and, if additional antities of gas or other substances are needed at any time for control of pres ires, determine the amounts to be acquired and the terms and conditions upon hich the Operator shall be authorized to purchase and inject such additional uantities of gas or other substances.

(g) Determine from time to time whether the diversion of Residual Dry Gas ill adversely affect the accomplishment of the purposes of this agreement.

(h) Determine the extent of drilling operations necessary for the proper de elopment and operation of the 27–B Pool.

(i) Pass upon and approve or disapprove: (1) Operator's advance estimate of sts and expenditures, as provided in section 9 (d) hereof; and (2) any proposed penditure of Operator, other than those provided in section 9 (d) hereof, for y item in excess of Fifteen Thousand Dollars ($15,000).

(j) Pass upon and approve or disapprove the proposed sale and disposition of intly-owned surplus materials and equipment by Operator.

(k) Compromise or effect settlements of material overages and shortages at ne of inventories.

(l) Meet at least quarterly at the call of Operator, provided that any Partici ant may call a meeting of Participants upon the failure of the Operator to do so.

(m) Determine any additional matter required by any other provision of this greement, or necessary or proper in accomplishing the objectives of this agreement.

SECTION 15. DETERMINATION OF RATES OF PRODUCTION

The rates of production from the 27–B Pool shall be determined by Participants provided in paragraph (e) of section 14. If at any time, the Secretary of the avy (or his designated representative) shall be of the opinion that the rates of roduction, so fixed by Participants, are not fixed in accordance with sound and fficient oil-field practices to obtain ultimately the economic maximum recovery f oil, gas and associated hydrocarbons, the Secretary of the Navy may serve pon Operator a notice in writing stating: (a) the rates of production which in is opinion would, in accordance with sound and efficient oil-field practices and far as consistent with proper conservation of the natural resources of the 27-B ool without requiring the drilling of additional wells or the installation of addi ional facilities, result in a greater economic maximum recovery of oil, gas and ssociated hydrocarbons than the rates so fixed by Participants, and (b) the actual data and engineering principles upon which such opinion is based; and within sixty (60) days after Operator shall have received such notice, Partici ants and the designated representative of the Secretary of the Navy shall not ave agreed upon rates of production for the ensuing period of not less than welve (12) months, the Secretary may demand, by notice in writing served upon he Operator for and in behalf of Participants, that such rates of production be etermined by arbitration. Such notice shall designate the arbitrator selected

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by the Secretary of the Navy. Within thirty (30) days after receipt of suc notice by Operator the Participants shall, by notice in writing served upon th designated representative of the Secretary of the Navy, designate the arbitrato selected by them. The two (2) arbitrators so selected shall within thirty (30 days select a third disinterested arbitrator. Thereafter, the three (3) arbitrator shall give thirty (30) days written notice to Operator and the Secretary of th Navy of a time and place of hearing at which evidence and argument may b presented by Participants and the Secretary of the Navy. Within sixty (60 days after the conclusion of such hearing, the arbitrators shall determine b majority vote the rates of production for the period of twelve (12) months follow ing the expiration of fifteen (15) days after such decision is served upon the Op erator and the designated representative of the Secretary of the Navy, which, i accordance with and without considering factors other than sound and efficien oil-field practices, and so far as consistent with proper conservation of the natura resources of the 27–B Pool without requiring the drilling of additional wells o the installation of additional facilities, will result ultimately in the economi maximum recovery of oil, gas and associated hydrocarbons, and the authorit of the arbitrators shall be limited to the determination of such rates of production The determination of the arbitrators within the scope of such authority shall b binding upon all parties to this agreement including the United States and holder of royalty interests; provided, however, that such determination may be change at any time by agreement of Participants and the designated representative o the Secretary of the Navy. Each arbitrator shall have at least ten (10) year experience as a petroleum engineer, or if a graduate engineer, at least five (5 years experience as a petroleum engineer. All reasonable costs and expenses o the arbitration shall be paid by Operator and charged to the common account o the Participants hereunder. In no event shall the rates of production fixed pur suant to this section 15 exceed the fair and proper share of the allowable produc tion for the State of California under any system prescribed by applicable law s long as such system is not set aside, or to the extent that it is not modified by an order of a court of competent jurisdiction.

SECTION 16. RENTALS, ROYALTIES, AND LEASE OBLIGATIONS

Each Participant agrees to pay all rentals, royalties, overriding royalties and other payments which pertain to or affect lands subject to this agreement and which may be or become payable pursuant to any lease or other agreement to which it is a party, and further agrees (except as to those obligations expressly charged or confided to Operator hereunder) to do and perform, or to cause to be done and performed, such other acts and operations as shall be necessary and sufficient to maintain in good standing and free from breach or default any and all leases and other agreements to which it is a party and which relate to or affect lands subject to this agreement.

In the event that any Participant shall fail to make any such payment when due, and if the failure to make such payment shall constitute a default permitting termination or forfeiture of the leasehold right of such Participant in or to any lands which have been made subject hereto, the other Participants, at their election, may make such payment for and on behalf of the defaulting Participant and shall be entitled to reimbursement therefor by such defaulting Participant plus interest at the rate of seven percent (7%) per annum from the date of such payment.

SECTION 17. GOVERNMENT ROYALTIES

The royalty and rental obligations of the respective lessees of the United States are hereby modified and established as follows:

(a) Upon the crude oil produced from the 27–B Pool which is allocated to lands of the United States pursuant to this agreement, royalty payable to the United States shall be computed and paid in cash or delivered in kind at the rate of twelve and nine-tenths percent (12.9%).

(b) Upon all gas and hydrocarbon substance other than crude oil produced from the 27–B Pool which are allocated to lands of the United States pursuant to this agreement, but subject, nevertheless, to paragraph (e) of section 7, royalty payable to the United States shall be computed and paid in cash or delivered in kind at the rates specified in the respective leases of such lands and for such purpose the gas produced and sold from all zones or pools other than the 27–B Pool and the gas allocated to lands of the United States pursuant to this agreement and sold shall be aggregated to determine the average production of gas per day; provided, however, that royalty on natural gasoline, butane, propane and

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ther liquid hydrocarbon substances extracted from gas shall be computed on the asis of thirty-three and one-third percent (33⅓%) only of such substances, the emaining sixty-six and two-thirds percent (66⅔%) being an allowance for the ost of manufacture upon which no royalty shall be paid.

(c) A minimum royalty of $1.00 per acre of each Government Lease, any art of which is subject to this agreement, shall be payable to the United States, i lieu of rental, at the expiration of each lease year beginning on or after the fective date of this agreement.

(d) Nothing contained in this agreement shall operate to relieve the lessees of ie United States from the royalty and rental obligations of their respective leases ; such royalty and rental obligations are modified and established by this greement.

SECTION 18. TAXES

Each Participant shall prepare and file its returns with the proper taxing authorities covering mineral rights assessments pertaining to such Participant's lands in ie Area, and shall also prepare and file its returns covering all real estate, improvements and personal property solely owned by it and located within the rea. Each Participant hereto shall pay, or cause to be paid, to the proper axing authorities all mineral rights taxes levied or assessed against its tracts of nd, and taxes on its solely-owned improvements and personal property, and hall furnish to the other Participants a written statement of the amount of such ineral rights taxes levied or assessed and payments thereon. Operator shall repare and file returns with the proper taxing authorities covering the assessments n all jointly-owned improvements and personal property. Operator shall pay cause to be paid, to the proper taxing authorities, all taxes levied or assessed gainst such jointly-owned improvements and personal property. Operator hall make a calculation of the aggregate amount of mineral rights taxes pertaining to the 27–B Pool underlying lands subject to this agreement which have been levied and assessed, together with the aggregate amount of the taxes levied, ssessed and paid relating to the jointly-owned equipment and facilities, and the ggregate amount so calculated annually shall be apportioned among the Parcipants in the ratio of the Participating Equities as of the first Monday in March f each year commencing March 1949, or as of any other date that the State hall adopt as the date for the assessment of property for tax purposes. In the vent that the mineral rights taxes, which pertain to the 27–B Pool, and which re levied, assessed, and paid as to a Participant's tracts of land, are in excess of n amount equivalent to its Participating Equity percentage of the total amount f all such taxes, such Participant shall be entitled to reimbursement for such xcess by such other Participants who shall have paid or caused to be paid an mount of such taxes less than their Participating Equity percentages thereof. ach Participant shall reimburse Operator for taxes paid on jointly-owned improvements and personal property in the same ratio as their Participating Equity s of the first Monday in March, 1949, or as of any other date that the State shall dopt as the date for the assessment of property for tax purposes.

Operator shall pay, for and on behalf of Participants, all taxes and assessments n or measured by the production of 27–B Pool oil, gas, and other hydrocarbons om lands subject to this agreement, including the State Petroleum and Gas Fund ssessment, and shall include the payment of such taxes and assessments in perator's statements to Participants.

The several Participants may collect from their respective lessors and royalty wners (other than the United States), by deduction from royalties or otherwise, he share of taxes for which such lessors or royalty owners are or may hereafter e liable under any lease or agreement made by or with them, without accounting herefor to Operator or the other Participants.

SECTION 19. LIMITATION ON LIABILITY

(a) Each Participant shall be responsible to the other Participants for only its bligations, as set forth herein, and shall be liable to the other Participants only or its proportionate share of costs and expenses, as provided herein.

(b) The Operator shall not be liable for the result of any errors of judgment r for the loss of or damage to any jointly-owned property or equipment not esulting from the gross negligence or willful misconduct of Operator or its mployees.

(c) Each Participant fully releases all other Participants from any and all damage because of disturbance of reservoir conditions in the 27–B Pool resulting rom, or which may have resulted from, operations pursuant to this agreement, or

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which may be claimed upon the ground that operations under the provisions hereof have resulted in, or will result in, a loss in ultimate recovery of oil, gas, or other hydrocarbons from such Participant's leases or lands in the 27–B Pool.

SECTION 20. EFFECTIVE DATE OR AGREEMENT

This agreement shall become effective on the first day of the first calendar month which commences not less than ten (10) days after all of the following events shall have occurred:

(a) Execution of this agreement by all the owners and lessees of lands described in Exhibit "B" hereof; and

(b) Approval of this agreement by the State Oil and Gas Supervisor, pursuant to the provisions of Section 3301 of the Public Resources Code of the State of California; and

(c) Approval of this agreement by the Secretary of the Navy of the United States of America with the consent of the President, pursuant to the Acts of Congress referred to in Recital 8 hereof.

SECTION 21. TERM

This agreement upon becoming effective, as provided in section 20, shall continue in full force and effect as long as oil, gas, natural gasoline and/or associated hydrocarbons can be produced hereunder from the 27–B Pool in commercially paying quantities; provided, however, that this agreement may be terminated prior to such expiration date by unanimous consent of all Participants and the Secretary of the Navy.

SECTION 22. WARRANTIES

(a) Each Participant warrants and represents that as of the effective date hereof such Participant has not transferred, conveyed, hypothecated, or otherwise disposed of any part of its lands or lease-hold estates as described in Exhibit "B" hereof, or any interest therein

(b) Each Participant warrants and represents that as of the effective date hereof it is not party to any contract or agreement for the sale, disposal, processing or treatment of oil, gas, natural gasoline and/or associated hydrocarbons which may be produced and saved from the 27–B Pool by or through wells drilled on its lands other than such Participant's Participating Equity share thereof as provided in this agreement.

SECTION 23. RELATIONSHIP OF PARTICIPANTS

It is the intent of each Participant executing this agreement to establish Operator as agent of such Participant for the sole purpose of developing and operating the 27–B Pool to the extent herein set forth.

SECTION 24. COVENANTS TO RUN WITH LAND

All the terms, covenants, provisions, and conditions contained in this agreement are expressly agreed to be for the direct benefit of each tract of land described in Exhibit "B" hereof, and are made by each of the Participants on behallf of its successors and assigns for the benefit of the tracts of land of each of the other Participants and for the benefit of the other Participants, and their successors and assigns, and are intended to run with all of said lands during the life of this agreement. All rights and obligations of the Participants shall inure to the benefit of and shall likewise be assumed by the successors and assigns of the respective Participants.

SECTION 25. GOVERNMENT LEASES

(a) The Operating Regulations, effective June 1, 1942, 30 C. F. R., Part 221, but no amendment thereof not accepted in writing by all Participants, shall be and remain the applicable operating regulations with respect to the leases of lands of the United States; provided, however, that if any provision of this agreement is inconsistent with or in conflict with any such regulation, then such provision of this agreement shall prevail, and without limiting the generality of the foregoing, the provisions of this agreement relating to the rates of production, the number and location of wells to be drilled for production or injection, the plan and method for the control of pressure in the 27–B Pool, and providing for the prevention of waste as set forth in section 1 shall supersede such regulations, but, nevertheless,

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one of the rights and powers specified in section 14 shall be deemed to modify, strict or curtail the duties, functions and responsibilities of the designated representative of the Secretary of the Navy with respect to operations on lands of the nited States under sections 221.8, 221.9, 221.11, 221.20 (a), 221.21 to and including 221.34 and 221.37 of such regulations, and those regulations must be complied ith in any event; and provided, further, that with respect to the determination value of production for computation of royalty payable to the United States, e contractual obligations and rights of the lessees and of the United States, as such ntractual obligations and rights exist under and pursuant to the Plan-Agreement, ated October 1, 1935, (identified in Recital 3 of this agreement), shall not be odified or abridged by such regulations.

(b) The Participants, and each of them, who are the lessees under U. S. Government leases of lands within the Area, consent that the Secretary of the Navy all, and the Secretary, by his approval of this agreement, does hereby modify id amend each of such leases to conform to this agreement and consents and grees that during the term hereof the prospecting, drilling, and producing operaons of Operator upon any lands subject hereto, pursuant to the provisions of is agreement, shall constitute operations under and for the benefit of all such ases, and that no lease shall be deemed to expire by reason of failure to operate produce from wells on lands embraced therein; and each and all of such leases e hereby extended to continue in force and effect for and during the life of this greement, insofar as they relate to or affect the 27–B Pool.

(c) The Participants who are parties to the agreements referred to in Recitals 3 id 4 of this agreement, or either thereof, agree each with the other, and the ecretary of the Navy by his approval of this agreement does hereby agree, (i) that uring the term of this agreement the agreements referred to in Recitals 3 and 4 this agreement shall be suspended with respect to the 27–B Pool, (ii) that upon e termination of this agreement for any reason whatsoever the agreements reerred to in Recitals 3 and 4 of this agreement shall be again in full force and ffect with respect to the 27–B Pool, and (iii) that no act or deed done or omitted o be done in the performance of this agreement shall ever be, or be construed to e, a default by any person in the performance, or a breach of any term, covenant r condition, of any of the agreements referred to in Recitals 3 and 4 of this greement

SECTION 26. RIGHT OF INSPECTION

Each Participant shall have the following specific rights and privileges:

(a) Access to any land within the Area at all reasonable times to inspect the ork of development and operation hereunder.

(b) The right to inspect the logs, samples, and cuttings from any and all wells rilled hereunder.

(c) The right to inspect and audit the Operator's books, records, and invoices ertaining to any matter of accounting arising hereunder, not more than once ach calendar month, by an experienced auditor or accountant representing all Participants desiring to make such inspection and audit. Each Participant shall ikewise have the right, not more than once each month, to inspect and audit the ooks, records, and invoices of each other Participant, pertaining to any matter f accounting arising hereunder.

(d) The right to inspect any agreement or document affecting the 27–B Pool hich is in the custody of Operator and which relates to operations hereunder.

SECTION 27. REPORTS AND RECORDS

Operator shall furnish Participants with copies of logs of all wells hereafter drilled by Operator into the 27–B Pool, and upon request of the Participants, shall furnish the Participants with daily drilling reports. Operator shall also furnish Participants with monthly reports showing the status of developments and operations and the amount and character of production therefrom.

SECTION 28. NOTICES

Any notice required or permitted to be given by a Participant to any other Participant may be given by the delivery or mailing of a copy thereof to such other Participant. Notices shall be complete forty-eight (48) hours after the date of mailing or delivery. The addresses appearing after the respective signatures to this agreement shall be the addresses to which notices shall be mailed or delivered to the Participants. Any Participant may change its address by a notice to all the other Participants.

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SECTION 29. FORCE MAJEURE

All obligations (except financial) of each Participant and of Operator shall be suspended while, but only so long as, such Participant or Operator, as the case may be, is prevented or hindered from complying therewith, in whole or in part, by strikes, lockouts, governmental action, acts of God, unavoidable accident, war, insurrection, rebellion, invasion, uncontrollable delays in transportation, inadequate facilities for the transportation of materials, inability to obtain materials from established or generally recognized sources of supply, or other matters (except financial) beyond the reasonable control of such Participant or Operator, as the case may be, whether similar to the matters herein specifically enumerated or not.

SECTION 30. EXECUTION IN COUNTERPARTS

This agreement may be executed in any number of counterparts with the same force and effect as if all Participants had signed the same document.

IN WITNESS WHEREOF, the Participants have executed this agreement as of the day and year first hereinabove written.

Address:
225 Bush Street,
San Francisco 20, California

STANDARD OIL COMPANY OF CALIFORNIA
By ----------
By ----------
Assistant Secretary

Address:
79 New Montgomery Street,
San Francisco 5, California

TIDE WATER ASSOCIATED OIL COMPANY
By ----------
By ----------

Address:
215 Market Street,
San Francisco 5, California

HONOLULU OIL CORPORATION
By ----------
By ----------

Address:
617 West Seventh Street,
Los Angeles 14, California

UNION OIL COMPANY OF CALIFORNIA
By ----------
By ----------

Address:
225 Bush Street,
San Francisco 20, California

MURVALE OIL COMPANY
By ----------
By ----------

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EXHIBIT "A"

greement for the 27-B Pool of the Buena Vista Hills Oil and Gas Field, Kern County, California

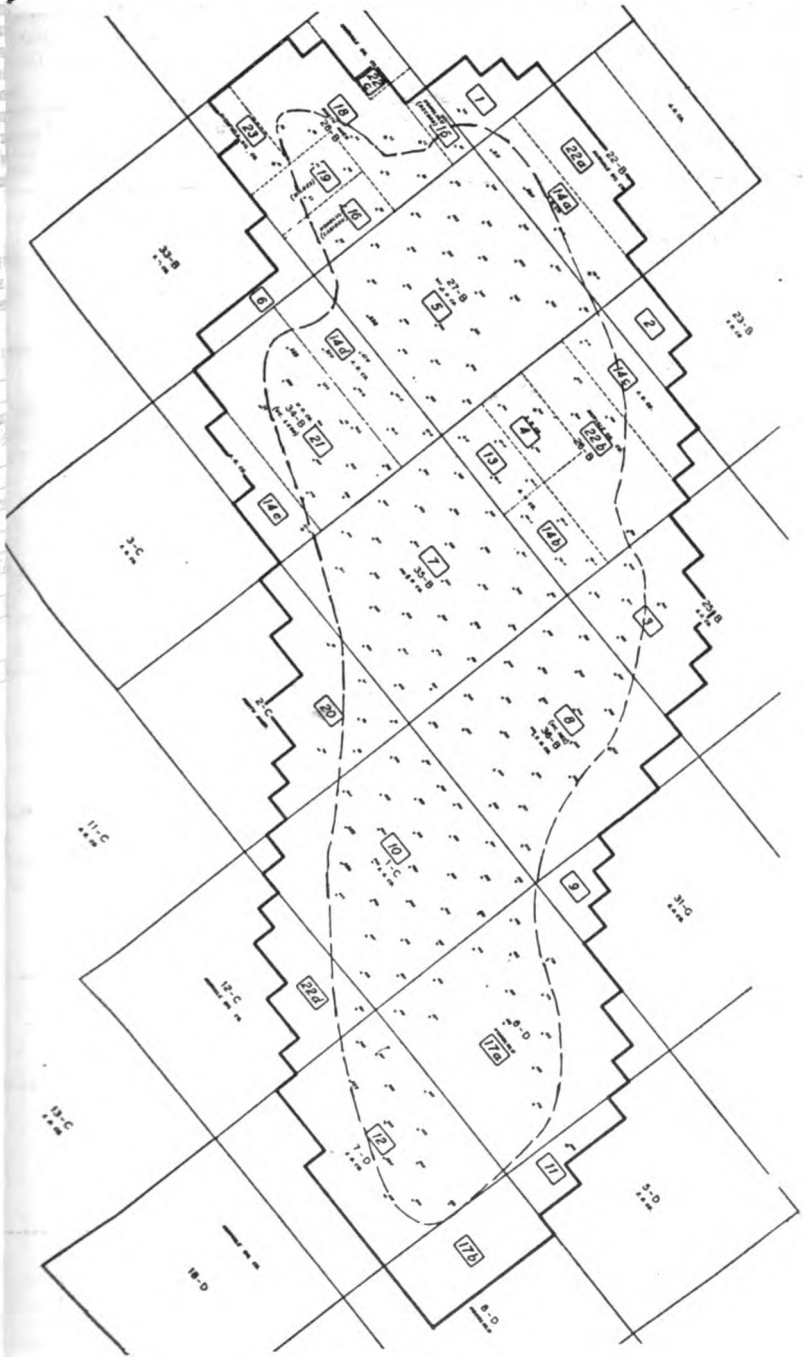

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EXHIBIT "B"

Lands Included Within Unit Operating Agreement for the 27–B Pool and Percentage of Interest in Production Therefrom Allocated to Each Numbered and Designated Tract—27–B Pool of the Buena Vista Hills Oil and Gas Field, Kern County, California

Tract No.	Company and lease	Description	Acre-feet of productive sand	Percentage [illegible]
1	Standard Oil Company of California—Fee.	The Southeast Quarter of the Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$), the East Half of the Southwest Quarter of the Southeast Quarter ($E\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$), the South Half of the Northeast Quarter of the Southeast Quarter ($S\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$) and the Northeast Quarter of the Northeast Quarter of the Southeast Quarter ($NE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$) of Section 21, Township 31 South, Range 23 East, M. D. B. & M.	73.40	[illegible]
2	Standard Oil Company of California—Fee.	The Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}$), The West Half of the Southeast Quarter of the Southwest Quarter ($W\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$) and the Southeast Quarter of the Southeast Quarter of the Southwest Quarter ($SE\frac{1}{4}SE\frac{1}{4}SW\frac{1}{4}$) of Section 23, Township 31 South, Range 23 East, M. D. B. & M.	----------	----------
3	Standard Oil Company of California—Fee.	The Southwest Quarter ($SW\frac{1}{4}$), the Southwest Quarter of the Southeast Quarter ($SW\frac{1}{4}SE\frac{1}{4}$), the Southwest Quarter of the Northwest Quarter of the Southeast Quarter ($SW\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$) and the South Half of the Southwest Quarter of the Northwest Quarter ($S\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$) of Section 25, Township 31 South, Range 23 East, M. D. B. & M.	3,702.69	[illegible]
4	Standard Oil Company of California—Fee.	The North Half of the Southwest Quarter ($N\frac{1}{2}SW\frac{1}{4}$) of Section 26, Township 31 South, Range 23 East, M. D. B. & M.	5,257.54	[illegible]
5	Standard Oil Company of California—Fee.	All of Section 27, Township 31 South, Range 23 East, M. D. B. & M.	38,501.83	[illegible]
6	Standard Oil Company of California—Fee.	The East Half of the East Half of the Northeast Quarter ($E\frac{1}{2}E\frac{1}{2}NE\frac{1}{4}$), the Northwest Quarter of the Northeast Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$), the Northeast Quarter of the Northwest Quarter of the Northeast Quarter ($NE\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$) and the Northeast Quarter of the Northeast Quarter of the Southeast Quarter ($NE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$) of Section 33, Township 31 South, Range 23 East, M. D. B. & M.	----------	----------
7	Standard Oil Company of California—Fee.	All of Section 35, Township 31 South, Range 23 East, M. D. B. & M.	39,441.00	[illegible]
8	Standard Oil Company of California—Fee.	The South Half ($S\frac{1}{2}$), the Northwest Quarter ($NW\frac{1}{4}$), the West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$), the Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4}NE\frac{1}{4}$), and the West Half of the Northeast Quarter of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$) of Section 36, Township 31 South, Range 23 East, M. D. B. & M.	36,940.94	[illegible]
9	Standard Oil Company of California—Fee.	The Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}$), the Southwest Quarter of the Southeast Quarter of the Southwest Quarter ($SW\frac{1}{4}SE\frac{1}{4}SW\frac{1}{4}$) and the Southwest Quarter of the Northwest Quarter of the Southwest Quarter ($SW\frac{1}{4}NW\frac{1}{4}SW\frac{1}{4}$) of Section 31, Township 31 South, Range 24 East, M. D. B. & M.	----------	----------
10	Standard Oil Company of California—Fee.	The North Half ($N\frac{1}{2}$), the Southeast Quarter ($SE\frac{1}{4}$), the East Half of the Southwest Quarter ($E\frac{1}{2}SW\frac{1}{4}$), the Northwest Quarter of the Southwest Quarter ($NW\frac{1}{4}SW\frac{1}{4}$), the North Half of the Southwest Quarter of the Southwest Quarter ($N\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$) and the Southeast Quarter of the Southwest Quarter of the Southwest Quarter ($SE\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$) of Section 1, Township 32 South, Range 23 East, M. D. B. & M.	28,827.74	[illegible]
11	Standard Oil Company of California—Fee.	The Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}$), the West Half of the Northwest Quarter of the Southwest Quarter ($S\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$), and the Southwest Quarter of the Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$) of Section 5, Township 32 South, Range 24 East, M. D. B. & M.	----------	----------

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ands Included Within Unit Operating Agreement for the 27–B Pool and Percentage of Interest in Production Therefrom Allocated to Each Numbered and Described Tract—27–B Pool of the Buena Vista Hills Oil and Gas Field, Kern County, California—Continued

ract No.	Company and lease	Description	Acre-feet of productive sand	Percentage interest
12	Standard Oil Company of California—Fee.	The North Half ($N\frac{1}{2}$), the North Half of the Southeast Quarter ($N\frac{1}{2}SE\frac{1}{4}$), the North Half of the North Half of the Southwest Quarter ($N\frac{1}{2}N\frac{1}{2}SW\frac{1}{4}$) and the Southeast Quarter of the Northeast Quarter of the Southwest Quarter ($SE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$) of Section 7, Township 32 South, Range 24 East, M. D. B. & M.	6,486.44	3.16704
13	Tide Water Associated Oil Company—Fee.	The South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section 26, Township 31 South, Range 23 East, M. D. B. & M.	6,300.94	8.07647
14	Tide Water Associated Oil Company—Lease Sac. 019571.	(a) The South Half of the South Half ($S\frac{1}{2}S\frac{1}{2}$) of Section 22, Township 31 South, Range 23 East, M. D. B. & M.	1,511.40	0.73795
		(b) The South Half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section 26, Township 31 South, Range 23 East, M. D. B. & M.	6,831.24	3,33539
		(c) The North Half of the Northwest Quarter ($N\frac{1}{2}NW\frac{1}{4}$), the Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$) and the Southwest Quarter of the Northeast Quarter of the Northeast Quarter ($SW\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$) of Section 26, Township 31 South, Range 23 East, M. D. B. & M.	629.16	.30719
		(d) The North Half of the North Half ($N\frac{1}{2}N\frac{1}{2}$) Section 34, Township 31 South, Range 23 East, M. D. B. & M.	4,604.41	2.24813
		(e) The Southeast Quarter of the Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$), the East Half of the Southwest Quarter of the Southeast Quarter ($E\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$), the Northwest Quarter of the Southwest Quarter of the Southeast Quarter ($NW\frac{1}{4}SW\frac{1}{4}SE\frac{1}{4}$) and the North Half of the Southeast Quarter of the Southwest Quarter ($N\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$) of Section 34, Township 31 South, Range 23 East, M. D. B. & M.	3.57	.00174
15	Honolulu Oil Corp.—Lease Sac. 019386 (b).	The North Half of the Northeast Quarter of the Northeast Quarter ($N\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$) and the Northeast Quarter of the Northwest Quarter of the Northeast Quarter ($NE\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$) of Section 28, Township 31 South, Range 23 East, M. D. B. & M.	301.84	.14738
16	Honolulu Oil Corp.—Lease Sac. 019385 (b).	The East Half of the Southeast Quarter ($E\frac{1}{2}SE\frac{1}{4}$) of Section 28, Township 31 South, Range 23 East, M. D. B. & M.	3,434.76	1.67704
17	Honolulu Oil Corp.—Lease Sac. 019343.	(a) The South Half ($S\frac{1}{2}$), the Northwest Quarter ($NW\frac{1}{4}$), the South Half of the Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$), the South Half of the Northwest Quarter of the Northeast Quarter ($S\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$), the Northwest Quarter of the Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$) and the Southwest Quarter of the Northeast Quarter of the Northeast Quarter ($SW\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$) of Section 6, Township 32 South, Range 24 East, M. D. B. & M.	12,365.19	6.03738
		(b) The West Half of the Northwest Quarter ($W\frac{1}{2}NW\frac{1}{4}$), the West Half of the East Half of the Northwest Quarter ($W\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}$), the Northwest Quarter of the Southwest Quarter ($NW\frac{1}{4}SW\frac{1}{4}$) and the West Half of the Northeast Quarter of the Southwest Quarter ($W\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$) of Section 8, Township 32 South, Range 24 East, M. D. B. & M.	----------	----------
21	Union Oil Company of California—Leases Sac. 019352 and 019352 (b).	The South Half of the North Half ($S\frac{1}{2}N\frac{1}{2}$) and the North Half of the South Half ($N\frac{1}{2}S\frac{1}{2}$) of Section 34, Township 31 South, Range 23 East, M. D. B. & M.	3,539.27	1.72807

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Lands Included Within Unit Operating Agreement for the 27–B Pool and Percentage of Interest in Production Therefrom Allocated to Each Numbered and Described Tract—27–B Pool of the Buena Vista Hills Oil and Gas Field, Kern County, California—Continued

Tract No.	Company and lease	Description	Acre-feet of productive sand	Percentage interest
22	Murvale Oil Company—Lease Sac. 019577.	(a) The North Half of the Southwest Quarter (N½SW¼), the West Half of the Northwest Quarter of the Southeast Quarter (W½NW¼SE¼), the Southeast Quarter of the Northwest Quarter of the Southeast Quarter (SE¼NW¼SE¼) and the Southwest Quarter of the Northeast Quarter of the Southeast Quarter (SW¼NE¼SE¼) of Section 22, Township 31 South, Range 23 East, M. D. B. & M.	.....	.....
		(b) The South Half of the North Half (S½N½) and the North Half of the Southeast Quarter (N½SE¼) of Section 26, Township 31 South, Range 23 East, M. D. B. & M.	5,393.08	2.63320
		(c) The Southeast Quarter of the Northeast Quarter of the Northwest Quarter (SE¼NE¼NW¼) of Section 28, Township 31 South, Range 23 East, M. D. B. & M.	.....	.....
		(d) The North Half of the Northeast Quarter (N½NE¼), the North Half of the Southeast Quarter of the Northeast Quarter (N½SE¼NE¼), the Southeast Quarter of the Southeast Quarter of the Northeast Quarter (SE¼SE¼NE¼), the Northeast Quarter of the Southwest Quarter of the Northeast Quarter (NE¼SW¼NE¼), the East Half of the Northeast Quarter of the Northwest Quarter (E½NE¼NW¼) and the Northwest Quarter of the Northeast Quarter of the Northwest Quarter (NW¼NE¼NW¼) of Section 12, Township 32 South, Range 23 East, M. D. B. & M.	664.15	.32428

EXHIBIT "C"

Participating Equities of the Participants in the Unit Operating Agreement for the 27–B Pool

Standard Oil Company of California	77.74578
Tide Water Associated Oil Company	9.70687
Honolulu Oil Corporation	7.86180
Murvale Oil Company	2.95748
Union Oil Company of California	1.72807

EXHIBIT "D"

Chart Showing Relationship of Basal Etchegoin Sands in Several of Presently Productive Wells in the 27–B Pool; as Referred to in Section 2, (c)

Company	Well No.	Depth E_1	To E_2	Points E_4	Total depth	Effective depth of well	Indicated base of E_4 sand
North American	74–28B	4154	4247	(1)	4320	4302	(1)
Standard Oil Co	343–27B	3621	3698	3832	3870	3776	3844
	358–27B	4292	4367	4522	4690	4440	4542
	321–35B	3842	3901	4030	4170	3965	4059
	356–35B	3873	3892	3990	4024	4024	4016
	325–36B	3397	3436	3534	3621	3621	3564
	341–1C	3301	3331	3407	3426	3426	3349
	374–7D	(2)	3894	3916	4000	4000	3947
Honolulu	127–6D	(3)	3205	3239	3264	3264	3206

[1] Not penetrated.
[2] Not reached.
[3] Not present.

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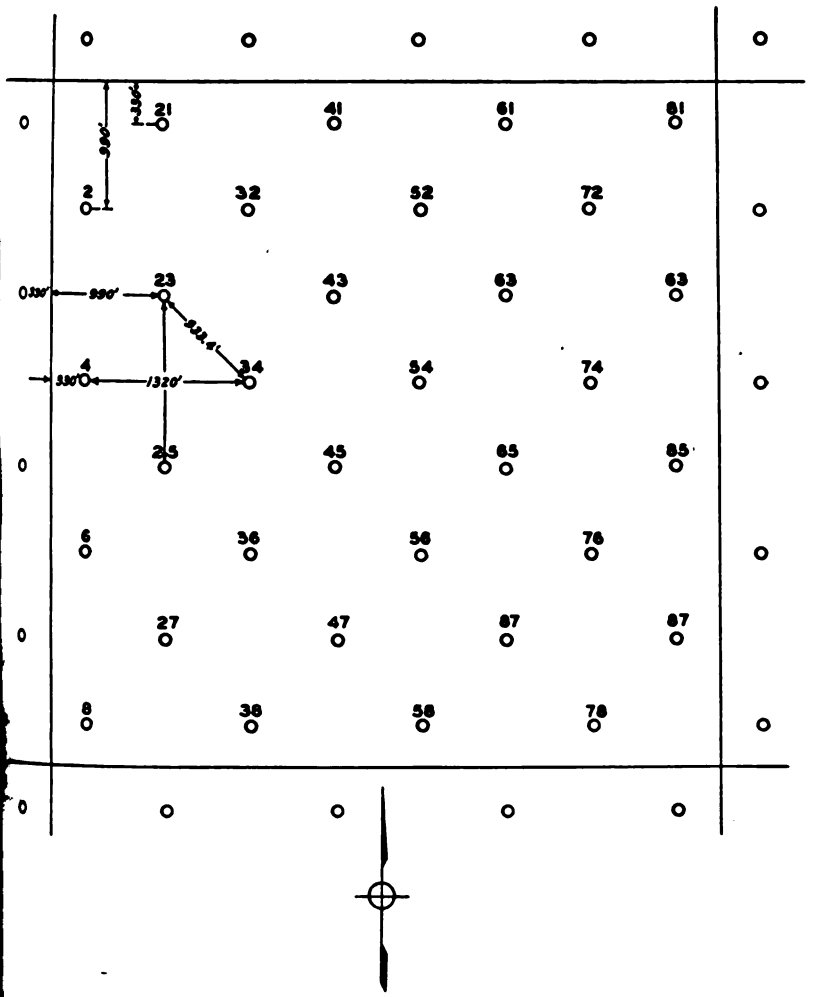

EXHIBIT "E" TO UNIT OPERATING AGREEMENT FOR THE 27B POOL OF THE BUENA VISTA HILLS OIL AND GAS FIELD, KERN COUNTY, CALIFORNIA.

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EXHIBIT "F"

Approval
Certification—Determination

Pursuant to the authority vested in the Secretary of the Navy, with the consent of the President of the United States, I do hereby:

A. Approve the attached Unit Agreement for the 27–B Pool of the Buena Vista Hills Oil and Gas Field, Kern County, California.

B. Certify and determine that the unit plan of development and operation contemplated in the attached agreement is necessary and advisable in the public interest for the purpose of more properly conserving the natural resources.

C. Certify and determine that the drilling, producing, rental, minimum royalty, and royalty requirements of all federal leases committed to said agreement in whole or in part, are hereby established, altered, changed, or revoked to conform with the terms and conditions of said agreement.

Dated ----------, 1948.

Secretary of the Navy

I, President of the United States of America, on the ----- day of ----------, 1948, do hereby consent to the execution of the foregoing agreement by the Secretary of the Navy.

President of the United States of America

EXHIBIT "G"

Approval and Determination

Pursuant to the statutory authority vested in the Oil and Gas Supervisor of the State of California under Section 3301 of the Public Resources Code of the State of California, I, R. D. BUSH, Oil and Gas Supervisor of the State of California, do hereby:

1. Approve the attached Unit Agreement for the 27–B Pool of the Buena Vista Hills Oil and Gas Field, Kern County, California.

2. Determine that it is in the interest of the protection of oil and gas from unreasonable waste that the foregoing agreement be entered into by the parties thereto in accordance with the purposes set forth in Section 3301 of the Public Resources Code of the State of California.

Dated: ----------

(R. D. Bush)
Oil and Gas Supervisor of the
State of California

APPENDIX K

----------, 1948

The Honorable the SECRETARY OF THE NAVY,
Washington, D. C.

Sir: We refer to that certain Unit Agreement for the 27–B Pool of the Buena Vista Hills Oil and Gas Field, Kern County, California, dated ----------, 1948, which we submit herewith for execution by you of the Approval-Certification-Determination appearing as Exhibit F thereto; and in consideration of the execution of such Approval-Certification-Determination we, the undersigned Participants named in such Unit Agreement and the undersigned Operator designated therein, do hereby agree with you as follows, to wit:

1. The designated representative of the Secretary of the Navy may attend all meetings of Participants held pursuant to Section 13 and shall have the right to be heard thereat upon all matters pertaining to the Unit Operation.

2. Notice of all meetings of Participants given pursuant to Section 13 of the Unit Agreement shall be given to the designated representative of the Secretary

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he Navy at the same time and in the same manner as notice of meetings shall given to Participants; and if any question is to be determined by Participants written consent, direction or other instrument, notice in writing of any ques- to be so determined shall be given to the designated representative of the retary of the Navy at the same time such question is submitted to Participants.

. In addition to such rights and privileges as the Secretary of the Navy may e with respect to lands of the United States, the designated representative of Secretary of the Navy shall have the following rights and privileges, to wit:

(a) Access to land in possession of the Operator at all reasonable times to observe and inspect the Unit Operations; and at such reasonable times as Operator shall designate and subject to such reasonable safety precautions as Operator shall prescribe, to strap or gauge tanks, test meters and other instruments and take samples of products.

(b) To inspect logs, samples, and cuttings from any and all wells drilled into or completed in the 27–B Pool by Operator or by any Participant.

. Operator shall furnish to the designated representative of the Secretary of Navy the following:

(a) Copies of logs of all wells drilled into or completed in the 27–B Pool by Operator and upon request of such representative copies of daily drilling reports.

(b) Copies of the monthly reports (exclusive of cost and financial reports) furnished by Operator to Participants showing the state of development and operation and the amount and character of production.

(c) Copies of engineering information and reports and pressure control studies and reports compiled or prepared by or for Operator with respect to the Unit Operation.

Very truly yours,

STANDARD OIL COMPANY OF CALIFORNIA
By ----------
Vice President

TIDE WATER ASSOCIATED OIL COMPANY
By ----------
Vice President

HONOLULU OIL CORPORATION
By ----------
Vice President

UNION OIL COMPANY OF CALIFORNIA
By ----------
Vice President

MURVALE OIL COMPANY
By ----------
Vice President

STANDARD OIL COMPANY OF CALIFORNIA
By ----------
Vice President

Operator

The CHAIRMAN. Now, have you had a hearing on this in the Senate?

Commodore GREENMAN. Yes, sir. The Senate committee has dicated their approval of it. And Mr. Harlow just handed you the ter from Mr. Tydings.

The CHAIRMAN. Let it go in the record. Read the letter, Mr. arlow.

Mr. HARLOW (reading):

My DEAR MR. SECRETARY: This is to advise that the Senate Committee on med Services places no objections to the unit agreement for the 27–B pool of e Buena Vista Hills oil and gas field, Naval Petroleum Reserve No. 2, Kern unty, Calif., as transmitted by your letter of February 2.

Sincerely yours,

M. E. TYDINGS, *Chairman.*

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The CHAIRMAN. Now, Commodore, briefly give to the committee what benefits accrue to the Government by entering into this unit contract?

Commodore GREENMAN. Yes, sir. I believe that each member has before him a table which analyzes the effect of this agreement to the advantage of the Government——

The CHAIRMAN. Before you do that, give the committee a little background. Some of the members do not fully understand the situation. Give the historical background of the Buean Vista field and who the unit contract is entered into with and who own the lands and all the details.

Commodore GREENMAN. Yes, sir.

Mr. RIVERS. And also, Mr. Chairman, the basis of their authority to enter into these contracts.

Commodore GREENMAN. May I answer that, sir? That is included in the letter from the Judge Advocate General to the Secretary, which is a part of this record.

Mr. RIVERS. I just was talking about it for the benefit of the new members.

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. Go ahead and briefly now tell us.

Commodore GREENMAN. Public Law 343, that was approved on the 17th of June 1944, authorized the Secretary of the Navy to enter into unit agreements with private interests in the naval petroleum reserves in order to protect the oil that was contained therein from drainage to wells on adjacent private lands. That is the substance of the act as far as unitization is concerned.

This [pointing to a map] is a sectional map showing the outline of Naval Petroleum Reserve No. 2, which is indicated by the blue line. The area within this reserve affected by this 27–B pool agreement is indicated by this heavy black line inside.

The red line, farther in, indicates the actual aerial extent of the pool as it is now known.

The situation in the field is hypothetically represented here. This is a cross section across the anticline. This is a dome structure, as you will visualize it, and we have made a hypothetical cross section across the middle of the field. This shows the various oil sands that are now producing in the field. This field was discovered in 1910. That was before any of the leases of Government land in this reserve were made.

Wells were drilled into those oil sands from the private properties adjoining Navy land, and the wells were draining the Navy's oil before we reached the point where we had the necessary authority to make leases. The first leases were made in 1919 and the 9 or 10 of them that are involved in the property now under consideration were concluded between 1919 and 1921.

The first sand discovered in this field was this shallow sand that is indicated here. The red at the top of the cross section indicates a gas cap in each instance, the black, the oil and the green, at the bottom is the water. Each one of these sands was discovered consecutively as they drilled deeper into the field, until in 1944 they got down to the lowest, to what is called the 27–B sand [indicating the lowest sand]. The name of 27–B is because it was found on section 27 of that township which is designated by the letter B.

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At the time the field was discovered pressures in each of the sands of
ne field were equalized by a gas cap at the top and by water pressure
the bottom. As soon as the wells were drilled into this field
ressures were disturbed. The oil produced with the result that gas
solution was released from the oil, causing the gas cap to expand,
id at the same time permitted the water to encroach further up
ructure driving the oil ahead. The wells which were located at the
est of the structure and those wells located on the flanks were
nsequently so located that they produced less oil and more gas and
the case of the wells on the crest; and more water and less oil in the
se of those on the flank. That is the general picture.

Mr. BROOKS. What is the depth of that sand, sir?

Commodore GREENMAN. This sand is 3,900 feet.

Mr. RIVERS. Is that the top one?

Commodore GREENMAN. This one. The most shallow sand is found
2,000 feet in this field, the next one at 3,000 feet—down in here—
d this one, the 27–B pool, between 3,600 and 3,900 feet. Now that
the hypothetical situation in the field.

Now I will endeavor to show you where the leases are with relation
the gas cap and the water area. This is a blow-up of the area
the reserve, representing that part which overlays the pool itself
dicating the red line on the large map]. The hatched areas are the
avy leases. The white areas are private lands. You will note that
e majority of the Navy leased acreage is either over the gas cap or
e water area. The Standard Oil Co. of California owns 77.7 percent
the entire area; 3.5 percent, roughly, is owned in fee by the Tide
ater Associated Oil Co.; 19.1775 percent is owned by the Navy, and
is that 19.1775 percent that we are interested in.

Now, as to the Navy leases. The dotted red lines indicate the
panded gas cap as it is today. The solid red lines indicate the gas
p as it was at the time that the pool was discovered, in 1944. You
ll notice we have two gas caps. This heavy green line indicates
e extent of the water at the point when the field was discovered.
The dotted green lines indicate how the water has encroached into
e field since the oil has been removed.

Now, you will see that the majority of the Navy leases are either
the gas cap or on the water area, with the result that within the
st year and a half our production—that is, the lessee's production
on which our royalty is based—has gone from 16.9 percent down to
09 percent as of December last.

Mr. SHORT. Commodore, does any private oil company object to
is proposed agreement?

Commodore GREENMAN. I did not quite understand you, sir.

Mr. SHORT. I say, does any private oil company object to this
roposed agreement?

Commodore GREENMAN. No, sir. I have a telegram that I would
ke to read into the record to answer that question.

Mr. BROOKS. What is this? Just a unitized drilling agreement?

Commodore GREENMAN. No, sir; it is an agreement to repressure
nd improve operating conditions.

Mr. BROOKS. And what are you going to increase the acreage by?

Commodore GREENMAN. There is no increase of acreage. The
creage involved is just that acreage which overlays the productive
rea of the pool.

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Mr. BROOKS. What is the unitized acreage going to be?

Commodore GREENMAN. The unitized acreage is 3,922.

Mr. BROOKS. But how much per well?

Commodore GREENMAN. Well, the purpose of the unitization, Mr. Brooks, is to operate the property as one unit. The number of wells that will be produced from unit will be based on that number which will most effectively produce the oil with the least loss of pressure. In other words——

Mr. BROOKS. It is not a drilling unitization agreement?

Commodore GREENMAN. Not at all.

Mr. BROOKS. But it is a production unitization agreement.

Commodore GREENMAN. Exactly. As a matter of fact, it is doubtful whether any more wells will ever be drilled into this pool.

Mr. BROOKS. And you figure by unitizing you will get a greater recovery to the United States.

Commodore GREENMAN. There is not any question about it.

The CHAIRMAN. Now read the telegram from one of the parties that agrees to it.

Commodore GREENMAN. Yes, sir. This telegram was addressed to me and it was just after I talked with you Mr. Chairman, about the hearing. There is reference in here about delay and the concern of the operators because production is dropping.

Reference to your wire about hearing on 27-B pool agreement. While you advise House Armed Services Committee will not reassemble until second week in March believe it desirable Navy impress necessity for early action when committee does reassemble because of the absolute necessity that gas injection commence in this pool as early as possible in order to assure greatest ultimate recovery.

I will explain that gas injection in a moment.

Injection equipment is available on the ground but construction cannot commence until agreement is finally approved by the Secretary of the Navy and the President. Further, some of proposed participants under agreement are becoming increasingly concerned over present production practices which do not give them their fair current share of pool production and the fact that artificial lifting equipment will have to be installed in the near future if pressure-control operations are not commenced.

Mr. BROOKS. You are going to recycle the gas?

Commodore GREENMAN. Yes, sir. It is a recycling to a certain extent, but it is actually building up pressures in the field.

Believe every possible effort should be made to have an agreement finally approved so it may become effective on the 1st of April.

Now in addition to that——

The CHAIRMAN. Is there anyone who is not coming into this unit agreement?

Commodore GREENMAN. Yes, sir, the North American Oil Co. which has a lease down here—right in here [indicating]. The other participants in the area are now negotiating with the North American Oil Co. to give them a greater percentage of that amount of oil that they think they are entitled to on that particular lease.

The CHAIRMAN. Well, what effect would that have on the whole field, by this company refusing to come in under the unit agreement?

Commodore GREENMAN. If this company refuses to come in it will mean that they will continue to overproduce from this edge of the field which will to a certain degree work against the repressuring pro-

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gram that is to be instituted as soon as this agreement becomes effective.

The CHAIRMAN. Now this unit——

Commodore GREENMAN. It is not a matter of their not coming in, Mr. Vinson, so much as it is a question of their being assured of their equity.

The CHAIRMAN. Of participation.

Commodore GREENMAN. Of participation; yes, sir.

The CHAIRMAN. That is right.

Commodore GREENMAN. I talked with Mr. Bryant when I was in San Francisco about 3 weeks ago, and he indicated to me they felt they were approaching an agreement.

The CHAIRMAN. Now, who is this unit agreement being entered into with? What companies?

Commodore GREENMAN. The Standard Oil Co. of California, which owns 77.7 percent——

The CHAIRMAN. Is a unit agreement satisfactory to them?

Commodore GREENMAN. Yes, sir. I have a letter signed by all the participants in which they all agree to sign. A copy of this letter was included in the brochure that you, Mr. Chairman, gave each member of the committee——

The CHAIRMAN. All right. What other company?

Commodore GREENMAN. Tide Water Associated Oil Co., which owns about 7.9 percent in the field and of that 7.9 percent a little over 3 percent is fee and the rest of it is Navy lease.

The CHAIRMAN. They are satisfied?

Commodore GREENMAN. They are satisfied.

The CHAIRMAN. Who is next?

Commodore GREENMAN. The Honolulu Oil Corp. is next.

The CHAIRMAN. Which one?

Commodore GREENMAN. The Honolulu Oil Corp. is next.

Honolulu has 7.8 percent, represented in Navy leases. They have signified their willingness to come into this agreement. The Murvale Oil Co., which owns 2.96 percent, has also indicated a willingness to come into it. And Union Oil Co., that owns 1.7 percent as far as Navy leases are concerned, also has indicated a willingness.

The CHAIRMAN. And you have letters from all these companies agreeing to the unit contract?

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. And the unit contract has been approved by the Judge Advocate General of the Navy Department?

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. Approved by the Attorney General?

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. Approved by the Department of the Interior?

Commodore GREENMAN. It was found in the best interests of the Government by the Secretary of the Interior.

The CHAIRMAN. Now all that is necessary is for the Secretary of the Navy and the President to approve it.

Commodore GREENMAN. That is correct. But before we can go further this committee has to signify that we have complied with the law as far as consultation is concerned.

Mr. TOWE. Mr. Chairman.

The CHAIRMAN. Mr. Towe.

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Mr. TOWE. Commodore, is this proposed agreement substantially the same as the one heretofore entered into covering joint operations?

Commodore GREENMAN. As far as the Navy is concerned, no. As far as the Interior Department is concerned, yes. It is quite similar to a unit agreement that they have entered into with the fee owners and lease owners in Coalinga Nose, which is about 50 miles north and west of the Elk Hills.

As a matter of fact, the Secretary of the Interior in his letter refers to this agreement, Coalings Nose Agreement, and states that our agreement is similar to that one.

The CHAIRMAN. The law does not require that the committee approve it.

Commodore GREENMAN. No, sir.

The CHAIRMAN. The law merely requires you to lay it before the committee and give the committee the information, which you are giving now.

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. And when that has been accomplished, then if the committee does not agree with you, of course, the committee can take other action.

Commodore GREENMAN. Yes sir.

The CHAIRMAN. I have had a memorandum drawn up:

MY DEAR MR. SECRETARY: This is to advise that consultation with the House Committee on Armed Services has been had by the Department of the Navy in respect to the proposed unit agreement for the 27-B Pool of the Buena Vista Hills oil and gas field, Naval Reserve No. 2, Kern County, Calif., as required by law.

And then it goes one sentence further:

And this committee interposes no objection to the consummation of the proposed agreement.

That is all we have to do.

Commodore GREENMAN. Yes, sir.

Mr. BROOKS. Could I ask the commodore one question more?

Commodore GREENMAN. Yes, sir.

Mr. BROOKS. I would like to find out, is the California Company going to operate the unitized agreement?

Commodore GREENMAN. The Standard Oil Co. of California has been elected by the operators to operate this field; yes, sir.

The CHAIRMAN. Is there any objection to my sending the letter I have just read to Mr. Sullivan, the Secretary of the Navy?

Mr. SHORT. Just a moment, Mr. Chairman.

Commodore, under existing arrangements, do you feel that the Government is not receiving its just proportionate share of oil?

Commodore GREENMAN. Very definitely, sir. Could I refer you to that mimeographed sheet that you have in front of you? Under item B, I have taken the production from the field for the month of December and have made a comparison with what the Navy's share would be if we were taking that same amount of oil under the unitized plan.

The total amount of production on a competitive basis—which is the basis we are operating on now—is 948,759 barrels a month. The Navy's lessees' share of that oil, by the actual oil produced from the field within that area that we propose to unitize, is 86,177 barrels, or

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8 percent. The royalty oil on that lessees' share is 10,725 barrels, rth $27,310 for that month of December.

Now let us take the same amount of oil and assume the area is tized. Under the unitized plan, using the same amount of pro-tion, 948,759 barrels, the Navy's lessees would get 181,950 barrels, 19.17 percent.

Mr. SHORT. Under the proposed arrangement the Government's ount of oil will be materially increased.

Commodore GREENMAN. By 118 percent.

Mr. SHORT. Will the private companies be decreased?

Commodore GREENMAN. The private companies have agreed, sir, t in the interest——

Mr. SHORT. Will it be decreased? If the Government is increased, private companies will be decreased; will they not?

Commodore GREENMAN. Yes, sir; that is correct.

Mr. SHORT. And the Government owns only 19 percent of the land his area—the pool.

Commodore GREENMAN. That is right. The private companies uld be decreased. But they make it up in the end. Mr. Short——

Mr. SHORT. You are making a pretty good trade. But you are not ng to gouge private owners and individuals are you?

Commodore GREENMAN. No sir; we are entitled Mr. Short to a alty on every drop of oil that is produced from that field.

Mr. SHORT. And you are not getting it now.

Commodore GREENMAN. Well, because of the fact that secondary overy which this really amounts to has not yet been instituted in field. But the lessees made a good deal with the Standard Oil Co.

Mr. RIVERS. If you do not agree they would not get anything.

Commodore GREENMAN. If we do not agree we will lose.

Mr. RIVERS. I see.

Commodore GREENMAN. We will lose. They will all lose but the vy will be the greatest loser.

Mr. RIVERS. That is right.

The CHAIRMAN. Is there any other information the committee ires from the commodore in reference to this unit agreement?

What is the sense of the committee with reference to addressing this mmunication to the Secretary?

Mr. COLE. Mr. Chairman I move that the chairman be authorized send the communication to the Secretary which has already been d.

The CHAIRMAN. Without objection I am authorized to send the er which will be put in the record to the Secretary.

And at the same time commodore I want to put in the record rything relating to this transaction.

Commodore GREENMAN. Yes, sir.

The CHAIRMAN. Thank you very much, Commodore.

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APR 13

[No. 32]

FAREWELL CEREMONIES FOR SECRETARY OF DEFENSE JAMES FORRESTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Tuesday, March 29, 1949.

The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. Let the committee come to order.

Mr. Secretary Forrestal, this is not an ordinary committee meeting of the kind you have participated in so frequently in this room in the days that have gone by.

This is a special meeting. It is called for a specific purpose—to take official note of your retirement yesterday from your high office in the Government.

Mr. Secretary, you have a long and brilliant career. Much of it has been on the highest level of finance and industry. But it is in the service of your country, as a high official of our Government, that you have most singularly distinguished yourself among your fellow citizens.

I recall that on August 20, 1940, you assumed the office of the Under Secretary of the Navy. Much of the world was then at war. That was the time when the Nation as a whole—and the Congress and official Washington in particular—were beset on the one hand with the hope that this country could avoid war and, on the other hand, with the fear that we could not.

At that time, what did we have in the way of a Navy? When you became Under Secretary of the Navy, we had 1,058 vessels of all types, comprising 1,892,000 tons, of which 383 were combat vessels. We then had only 189,000 men in the entire Naval Establishment. This seemed a large force in those days.

It was then that your characteristic vision first became apparent. For in those troubled times, when the future was cloudy, you foresaw not only the scope but the very nature of the conflict in which we were to be so soon involved.

It was your foresight—and this is a matter of historical record—which resulted in the early plans for the procurement of large volumes of material and its construction into naval weapons.

It was your vision and the magnitude of the conflict just over the horizon that prompted the Navy to embark upon its huge construction program of 200 combatant ships at a cost of over $3,000,000,000.

This was a tremendous task then. And it was undertaken at a most difficult time. The results you achieved in the brief time remaining before hostilities bore fruit at a most critical time.

Then came Pearl Harbor. The blow, though serious, was not deadly due largely to your efforts of the preceding year. Due to your

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far-sighted preparations, the Navy Department had been brought to a state of readiness where it could replace in part and repair sufficiently most of the losses and damage.

It was 8 months to the day after Pearl Harbor that the Navy struck back to check our enemy in the Pacific at a critical point in his advance. At Guadalcanal Navy ships and aircraft and Marines engaged the enemy in a ferocious contest. I well recall the Imperial Japanese Command proclaimed this engagement to be crucial.

The progress made in the short period of 8 months from the disaster of Pearl Harbor to the grim struggle at Guadalcanal is a measure of the amazing achievements for which you are in large part responsible.

Two years later, on May 19, 1944, when we were saddened by Secretary Knox's untimely death, you became Secretary of the Navy.

The war was now reaching a climax. Two and one-half years of warfare had passed and the organized might of American industry had reached that astonishing and irresistible height which foretold victory.

In the short space of 4 years since you first took office in the Navy Department, the Navy had grown from 189,000 men to 3,600,000, from 383 combat vessels to 1,500 combat vessels, and from 1,058 vessels of all types, comprising 1,892,000 tons, to more than 40,000 vessels, aggregating more than 10,000,000 tons.

This was a phenomenal accomplishment—a tribute to American ingenuity, enterprise, and determination, and especially a tribute to your painstaking and far-sighted efforts as Under Secretary of the Navy.

So, as the new Secretary of the Navy, with the production problem already in hand, your concern was mainly one of governing, administering, and directing the full force of the flood of naval weapons and sailors to use them, which were pouring out in a steady stream against our enemy across two oceans and reaching out to many lands.

During this time the great sea battles of the Pacific were undertaken. The campaigns of the Carolinas and the Marianas and others were a prelude to the greatest sea battle in the history of the world. It was your privilege, Mr. Secretary, to be the head of the Navy Department at the time of the battle of Leyte Gulf where the opposing sea power was decisively defeated. You were fortunate, indeed, to see the culmination of your thought and efforts in the brilliant accomplishment of our fighting forces and the final surrender of our enemy on the deck of the battleship *Missouri*.

Yes; it was your responsibility and high historic privilege to guide the destiny of the largest Navy in all the history of man—probably the largest Navy ever again to be seen.

And it was likewise your responsibility to direct the expenditure of much of the $118,000,000,000 appropriated for the Navy since July 1940, and never—not once—in all these difficult years was there any criticism of the administration of these vast funds.

This is truly a great record of which you have every right to be proud, and for which the Nation may be everlastingly grateful.

Mr. Secretary, in the years I have been a member of the Committee on Naval Affairs and, more recently, this committee, a number of great and distinguished Americans have held the office of the Secretary of the Navy. Let me name a few to recall to our minds the

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great character and ability this country must recruit from its citizens to fill the office of the head of one of our military departments.

Josephus Daniels, of North Carolina, a gentleman and patriot, forthright and vigorous, was the first I knew, and he left a large mark in the history of the Navy. Charles Francis Adams, of Massachusetts was another who brought great talent and high character to this office. And Claude Swanson, of Virginia, was a statesman and administrator of notable vigor and integrity.

Mr. Secretary, I deem it a privilege to say that you have every right to be numbered in the distinguished company of these great citizens, who have given so much of themselves to the country through their task of governing the Navy Department.

It is, in fact, a fair statement, Mr. Secretary, that you have assumed and performed with distinction duties far transcending in responsibility any heretofore undertaken by any previous Navy Secretary in the history of our great Nation.

That you filled the office in such critical and momentous days would be honor enough for any man.

That you filled the office with such outstanding success entitles you to distinction and recognition far beyond that attainable by more than few men in our history.

Certainly your attainments will have lasting influence on the Navy, on the National Military Establishment, on the Nation as a whole—influence working to the Nation's advantage far into the future.

With the end of the war, not only the Navy but the other services as well were confronted by other great problems.

The lessons of the war had to be applied quickly while they were still fresh in all minds.

Certainly the guiding principle of the war was that of teamwork.

So acutely had you become aware of this that it was due in large measure to your efforts that the Congress enacted the National Security Act of 1947.

Then, on September 17 of that year, you became this country's first Secretary of Defense.

The task you then undertook, and from which you have just departed, was that of welding our armed forces into an effective team.

Assuredly this has not been and is not today an easy task.

And as all of us know who have dealt with these matters, such a task cannot be accomplished overnight.

Your efforts as Secretary of Defense have been highly successful.

They have resulted in notable and meritorious progress—progress which others less gifted with administrative acumen, patience, and vision would have found wholly impossible.

In view of all of these significant events in which you have played so commanding a role, we want it long remembered and permanently recorded here that your outstanding talents and accomplishments on the highest levels of our Government have been appreciated and valued highly by this committee and the Congress.

Your wise counsel and devoted service have been a tower of strength in aiding the old Naval Affairs Committee and this committee in the discharge of its responsibilities.

Mr. Secretary, on behalf of the committee, I present you this token of our high esteem. Engraven upon it you will find our names

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in testimony of our regard. That regard is also indelibly inscribed in our hearts.

We will miss you, Mr. Secretary. [Applause.]

(Presentation made.)

Secretary FORRESTAL. Mr. Chairman, I am too much overcome by what I consider to be a very gracious and a very moving testimonial of your friendship and of those deeper feelings that come from the heart.

I should like to say for the record, however, without venturing to contradict the rhetoric of the chairman, that that tribute which he gave should properly be directed to himself and to the members of this committee because it was the unfailing zeal, the high intelligence, and the continuing zest for work which really built the American Navy and which under the chairmanship of Mr. Vinson will also build the defense forces under the unification which I know will be ably guided by Colonel Johnson, my successor.

I am much too moved to go into a longer appreciation for this most generous and exceptional act. I thank you deeply. [Applause.]

The CHAIRMAN. The Chair recognizes the distinguished gentleman from Missouri, Mr. Short.

Mr. SHORT. Mr. Chairman, Secretary Forrestal, and fellow Americans, often I have thought, "Now I know I was born to be an anticlimax." But as a member of the minority I wish to say on their behalf—and I am sure it is the sentiment of every member of this committee—that we wholeheartedly concur in the very fine, noble, and well-deserved comments of our distinguished and able chairman, the gentleman from Georgia, in regard to James Forrestal.

Loquacious as I might be at times, those who know me best I think will agree I am not prone to flattery or addicted to fulsomeness, but I can't refrain from saying on this occasion which is both pleasant and sad that in my own personal opinion James Forrestal is the perfect example of the highest type of public servant. After spending a year at Dartmouth and 3 years at Princeton, he learned a little about zinc and more about tobacco. He is one of those awful investment bankers. But when the First World War came on he quit his lucrative job and went into the service, I think, as a seaman second class. He came out a naval aviator. He served his country well in war as he has in peace. He came up the hard way, as a poor boy, to become president of Dillon, Read & Co. He was selected by the President of the United States in 1940 to come as his executive assistant to Washington.

Grand are the names of our military and naval and air officers who were at the guns. We should not forget the men back of the guns and back of the men behind the guns. I think through the terrible, trying years of the war much of the credit for our victory should go to the Under Secretaries, Bob Patterson, Jim Forrestal, and Jack McCloy. They did a marvelous job. They did it so well that two of them were made the Secretary of War and the Secretary of the Navy following their illustrious predecessors.

Nobly and ably as they served their country during war, I want to say that following the war in this most difficult period of transition the first Secretary of National Defense will always be remembered for the outstanding job he did in a most difficult, complicated, and almost impossible position.

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Jim Forrestal will forever be remembered by the members of this mmittee because of the admirable mixture of imperturbability and daring that is in him. Always cool, calm, courteous, courageous, d kind, he has won a permanent place in all of our hearts.

We regret to see you leave, sir; because we have seen you literally ar yourself away at this job, working from early in the morning til late at night. The public doesn't know the agony through which u have gone. With all of these contending forces and conflicting erests, in an atmosphere of disputatious contentiousness you have ored. And I think you have brought forth something more than nouse. I am sure that the success you have achieved has been due gely to the cooperation and the understanding of Secretary Royall, cretary Sullivan, and Secretary Symington.

We need a natural, healthy rivalry among our armed forces. It is a od thing. But we do want to forget the little, petty jealousies, kerings, and bitterness. We shall continue to strive for unity, peration and solidarity.

You are going to be succeeded by a great American, an illustrious ldier. I think I am not out of order, Mr. Chairman, when I say at Louis Johnson will have the same consideration and the same peration from this committee which Mr. Forrestal has had. Cerinly we have not always agreed with him. We have fought and ttled. But the members of this committee are a big family. I ppen to be No. 8 in a brood of 10 children at home. We used to ht and knock each other over and break the furniture up at home, t whenever some stranger or outsider jumped on one of us kids he d the whole damn family to whip. We are not always going to ree in the future, but I can promise you this: We have the welfare the Nation at heart and the security of this country uppermost in r minds and we want to do everything in our power to keep America rong and to contribute our share to the establishment of a just and sting peace.

As you leave us, Mr. Secretary, we want to wish you continued ccess, which we know your clean mind and clear mind, your stout d honest heart, and your ready and able hands will achieve. We pe most of all that you will get just a little well-earned and well-served rest. We wish you the best of health and God speed in all our undertakings. That comes from our hearts. [Applause.]

The CHAIRMAN. Thank you, Mr. Short.

Now, members of the committee, I have the honor to present to ou the new Secretary of National Defense, Mr. Johnson. [Applause.]

Secretary JOHNSON. Mr. Chairman and gentlemen of the committee, my friend Jim Forrestal, to the limit of my knowledge, I subscribe to everything that has been said about Jim Forrestal's record. f my own personal knowledge during these last 60 days—and, arenthetically, the only well-kept secret since it was known Jim as retiring is the fact that Jim and I have been working together; ven the Pentagon didn't find out about that until it was announced—luring that 60 days in which I came to value Jim Forrestal's friendhip, I came to value, too, a keen, incisive mind, one of the best nalytical minds I have ever come to know. I have come to treasure he love of America, with the friendship between us that has now leveloped, that prompted him to help me get started on this job. I

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know I can do a little better job from this 60 days of intensive effor on Jim Forrestal's part to indoctrinate me.

I am glad to come before this committee, Mr. Chairman, and bea testimony to my affection for Jim Forrestal, but more importantly to bear testimony to the debt of gratitude I owe for his patience wit me in this past 60 days. I haven't the gift of words of your brillian testimonial. It is one of the finest things I have ever heard. don't have round phrases like your colleague on your left used. don't come from a family of eight. There were only six of us. W had the same sort of experiences.

I want the privilege of coming before this committee when you don't send for me sometimes and with the doors shut just talk abou some of the problems that Jim leaves for me.

And lastly, I want to say that there are things that will happen in the Pentagon in the next 3 or 4 weeks, a month or two, and the headlines will probably say Louis Johnson did this or that. I want you t know—for instance, there are two announcements that we will mak at the press conference today on reorganizational matters and th headlines will say Louis Johnson did that—that those things are th results of studies that go back for months under the direction of Jim Forrestal and all that happened is they weren't quite ready to be an nounced before Jim came out over there and the credit is really Jim's

I want to say further, sir, my affection for him and my appreciation for the foundation he laid is so great that never knowingly will there be a word come out of the Pentagon against the great record of Jim Forrestal. [Applause.]

Secretary FORRESTAL. If I might, I cannot let this occasion pass without paying tribute to the men who are seated behind me: Secretary Royall of the Army, who has given the most devoted and loyal service; Secretary of the Navy Mr. Sullivan; and Secretary of the Air Force Mr. Symington, whose zeal and high devotion to his beliefs will be a lasting tribute to his record. [Applause.]

The CHAIRMAN. May I assure the distinguished new Secretary of National Defense, Mr. Johnson, that I know I speak for all of the committee when I say that we will welcome at all times counsel and advice. And we will be calling on you and no doubt you will be calling on us, and we will try to work with one objective in view—the best interests of our great country.

Mr. HÉBERT. Mr. Chairman, before you do, may I make the suggestion by direction of the committee that the remarks of yourself, as the chairman of this committee, and the remarks of Mr. Short, representing the minority, be inserted in the Record, in order that the entire Congress may know how we feel about Jim Forrestal.

The CHAIRMAN. I will ask Mr. Brooks to do that.

Now, I want to ask the policy committee to meet with me at 2 o'clock. I have a matter that I think is necessary to bring up for consideration of the policy committee.

Mr. SHORT. I think we overlooked just one thing, Mr. Chairman. I am sure our professional staff, who worked so closely with you, Mr. Secretary, and with all the other Secretaries here, as well as our office force, will heartily agree with everything Mr. Vinson and myself have said.

Secretary FORRESTAL. To your staff, Mr. Short and Mr. Chairman, both the committee and the military services are very deeply

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indebted. They have made a very great contribution of intelligence and perception and work to the efforts of your committee and to the accomplishments of the military services.

Mr. SHORT. We think we have the best staff on the Hill.

The CHAIRMAN. I understand that two of the Departments desire to present their seal to the committee.

Secretary FORRESTAL. This is the official seal, Mr. Chairman, of the National Military Establishment.

(Presents seal.)

The CHAIRMAN. Well, Mr. Secretary, we will place that on the wall of the committee room. We thank you very much for giving us the official seal of the National Military Establishment.

Secretary SYMINGTON. Mr. Chairman, it is my privilege to present this seal of the Department of the Air Force to you and the members of the committee, sir.

(Presents seal.)

The CHAIRMAN. Thank you, Mr. Secretary Symington. We appreciate it very much.

We already have here the seal of the Navy Department and I think the seal of the Army.

The CHAIRMAN. Now, members of the committee, we have a very distinguished member of the Hook Commission, Father Cavanaugh, and the bill on which he is going to address the committee has been referred to the subcommittee headed by Mr. Kilday. So I ask Mr. Kilday to take the chair and ask Father Cavanaugh to please come around.

Thank you, Mr. Secretary. Thank you, Mr. Secretary Johnson. We thank all you gentlemen.

Mr. SASSCER. Mr. Chairman, may I take up this list of acquisitions and disposals?

The CHAIRMAN. Without objection, the committee agrees to what Mr. Sasscer has there in his hand.

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APR 13 '49

[No. 33]

TO PROMOTE THE NATIONAL DEFENSE AND TO CONTRIBUTE TO MORE EFFECTIVE AERONAUTICAL RESEARCH BY AUTHORIZING PROFESSIONAL PERSONNEL OF THE NATIONAL ADVISORY COMMITTEE FOR AERONAUTICS TO ATTEND ACCREDITED GRADUATE SCHOOLS FOR RESEARCH AND STUDY (H. R. 3946). MR. VINSON

NATIONAL ADVISORY COMMITTEE FOR AERONAUTICS,
Washington 25, D. C., March 29, 1949.

Hon. SAM RAYBURN,
The Speaker of the House of Representatives,
The Capitol, Washington 25, D. C.

MY DEAR MR. SPEAKER: The National Advisory Committee for Aeronautics has experienced considerable difficulty in retaining capable research scientists because of their natural desire to increase their knowledge and ability while obtaining academic advanced degrees in their chosen fields. Some of the most promising young employees who have left the NACA to obtain such degrees have not returned upon completion of their studies because of more lucrative offers from other sources. As a consequence, the NACA's aeronautical research program has been handicapped.

It is believed that this situation can be improved and that the NACA can function more effectively if legislative authority is obtained to grant employees limited leaves of absence with pay for advance study in fields closely related to the NACA's research program.

There is submitted herewith a draft of bill which would permit the granting of such limited leaves of absence. This bill provides that the employee shall pay his own tuition and other academic expenses. The interest of the Government is protected by the provision requiring that the employee return to the NACA, or reimburse the Government for the leave granted.

As prescribed in the attached draft of bill, leaves of absence will be granted under this authority only in those cases where the special course of study to be undertaken by the employee would qualify him for more effective work with the NACA.

The NACA has been authorized by the Bureau of the Budget to submit this proposed legislation to the Congress. It is respectfully requested that it be introduced in the Eighty-first Congress.

Sincerely yours,

J. F. VICTORY, *Executive Secretary.*

85266—49—No. 33

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[No. 34]

TO AUTHORIZE THE CONSTRUCTION OF EXPERIMENTAL SUBMARINES, AND FOR OTHER PURPOSES (H. R. 4007). MR. BROOKS

THE SECRETARY OF DEFENSE,
Washington, March 31, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Navy recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To amend the act to authorize the construction of experimental submarines, and for other purposes, approved May 16, 1947."

This legislation has been approved for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the establishment has been placed in the Department of the Navy.

Sincerely yours,

LOUIS JOHNSON.

Attachment.

THE SECRETARY OF THE NAVY,
Washington, March 24, 1949.

The Honorable SAM RAYBURN,
The Speaker of the House of Representatives, Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a proposed draft of a bill to amend the act to authorize the construction of experimental submarines, and for other purposes, approved May 16, 1947.

The purpose of the bill is to remove the limit of $30,000,000 on the cost of the two experimental submarines authorized by the act of May 16, 1947 (61 Stat. 96). At the time this cost limit was established only the rudimentary characteristics of the submarines in question were available. Primarily due to increases in the cost of labor and material, present estimates, based on a more definite conception of the ultimate design of these vessels, exceed the above limit by approximately 50 percent. Without the removal of the limit, therefore, it will be impossible to complete the submarines with the required characteristics.

The estimated cost of this legislation is $10,500,000.

The Navy Department has been designated by the Office of the Secretary of Defense to sponsor this proposal on behalf of the National Military Establishment and accordingly recommends its enactment.

This report has been coordinated within the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Navy Department has been advised by the Bureau of the Budget that the proposed bill is in accord with the program of the President.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

A BILL To amend the act to authorize the construction of experimental submarines, and for other purposes, approved May 16, 1947

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of May 16, 1947 (61 Stat. 96), is hereby amended by deleting the following: ": *Provided,* That the cost of the vessels, the construction of which is authorized by this Act, shall not exceed $30,000,000." and substituting in lieu thereof a period.

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APR 13 '49

[No. 35]

TO AUTHORIZE ADVANCES IN PAY TO PERSONNEL OF THE ARMY, NAVY, AIR FORCE, AND MARINE CORPS UPON PERMANENT CHANGE OF STATION, AND FOR OTHER PURPOSES (H. R. 4050). MR. KILDAY

THE SECRETARY OF DEFENSE,
Washington, April 5, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Navy recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To authorize advances in pay to personnel of the Army, Navy, Air Force, and Marine Corps upon permanent change of station, and for other purposes."

This legislation has been approved for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the establishment has been placed in the Department of the Navy.

Sincerely yours,

LOUIS JOHNSON.

Enclosure.

THE SECRETARY OF THE NAVY,
Washington, March 30, 1949.

The Honorable SAM RAYBURN,
Speaker of the House of Representatives, Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill to authorize advances in pay to personnel of the Army, Navy, Air Force, and Marine Corps upon permanent change of station, and for other purposes.

The purpose of the proposed legislation is to authorize advances of not more than 3 months' pay to officers, and enlisted men of the first three pay grades, of the Army, Navy, Air Force, and Marine Corps upon change of station, and to authorize advances of pay and emoluments to such personnel when they are on duty at distant stations where their pay and emoluments cannot be disbursed regularly. The advances would be made under regulations prescribed by the head of the department concerned. The proposed bill would also protect disbursing officers who make advances in pay which result in the individual's account being overpaid at the time of discharge, death, or other separation from the service.

Under present law contained in the act of March 4, 1917 (39 Stat. 1181; 34 U. S. C. A. 875), advances of not more than 3 months' pay may be made to officers of the Navy and Marine Corps ordered to and from sea duty and to and from shore duty outside the continental limits of the United States under such regulations as the Secretary of the Navy may prescribe. Subsection 1 (a) of the proposed legislation would change this provision of law so that advances of not more than 3 months' pay may be made to officers and enlisted personnel of the Army, Navy, Air Force, and Marine Corps upon change of station under such regulations as the head of the department concerned may prescribe.

Married service personnel ordinarily move their families with them from one permanent-duty station to another. In this connection, abnormal expenses are incurred, such as deposits on homes and utilities, packing and shipping costs, temporary storage of household effects, and transportation expenses. Although

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many of these expenses are reimbursable, payment is at a later date and available cash must be used to initiate and accomplish these items of personal business.

When the act of March 4, 1917, became law, officers of the Navy and Marine Corps were ordinarily assigned to sea duty following a tour of shore duty. That law amply provided for that particular situation, at that time, but is not now adequate since there are many persons in the service who need not perform sea duty and there are others who are assigned to duty which does not entitle them to sea and foreign-service pay but which does count as sea duty for rotational purposes. In addition, there are many instances where seagoing personnel are ordered from one shore billet to another during their stay ashore.

Enlisted personnel of the first three pay grades are included since they have the same responsibilities in these matters as officers.

Section 1563 of the Revised Statutes authorizes the President to direct such advances in pay and emoluments as he may deem necessary to persons in the naval service on distant stations where their pay and allowances cannot be disbursed regularly. Subsection 1 (b) of the proposed bill would change this provision of law so as to include personnel of the Army, Navy, Air Force, and Marine Corps, and so as to authorize the heads of the departments concerned to prescribe the regulations for the administration of the subsection.

The Navy Department, accordingly, recommends enactment of the proposed legislation.

Enactment of the proposed legislation would result in only such additional cost to the Government as might be incurred when a disbursing officer is unable to recover an advancement made in accordance with this legislation due to the death, discharge, or other separation of the overpaid individual from the service. Although this cost cannot be estimated, it is considered that it would be negligible in comparison to the benefits to be derived from such advancements.

The Navy Department has been designated by the Office of the Secretary of Defense to sponsor this proposal on behalf of the National Military Establishment and accordingly recommends its enactment.

This report has been coordinated among the departments and boards in the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

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MAY 3 '49

[No. 36]

TO AUTHORIZE THE APPOINTMENT OF COL. KENNETH D. NICHOLS, 017498, PROFESSOR OF THE UNITED STATES MILITARY ACADEMY, IN THE PERMANENT GRADE OF COLONEL, REGULAR ARMY, AND FOR OTHER PURPOSES (H. R. 4260). MR. VINSON

DEPARTMENT OF THE ARMY,
Washington, April 8, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith draft of a bill to authorize the appointment of Col. Kenneth D. Nichols, 017498, professor of the United States Military Academy, in the permanent grade of colonel, Regular Army, and for other purposes, which the Department of the Army recommends be enacted into law.

The purpose of the proposed legislation is to authorize the President, by and with the consent of the Senate, to place Major General (colonel, professor at the United States Military Academy) Nichols on the Army promotion list of the Regular Army in the same position he would have occupied had he remained on the Army promotion list and had been selected for promotion to the grade of colonel at the time his contemporaries were selected.

General Nichols served during the war in the grade of brigadier general as an assistant to Lt. Gen. Leslie R. Groves in connection with atomic-energy matters. Following the end of the war he was appointed a professor at the United States Military Academy. Upon the retirement of General Groves it was considered to be in the best interests of the Government to place General Nichols in charge of the Army's atomic-energy program. This proposed bill will authorize his return to the Army promotion list in his original place. There are no laws now in existence which would permit such a transfer.

This legislation does not involve the expenditure of additional public funds.

The Bureau of the Budget has been consulted and advises that there is no objection to the submission of this proposed legislation for the consideration of the Congress.

Sincerely yours,

KENNETH C. ROYALL,
Secretary of the Army.

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[No. 37]

UNIFORM CODE OF MILITARY JUSTICE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES HOUSE OF REPRESENTATIVES

EIGHTY-FIRST CONGRESS

FIRST SESSION

ON

H. R. 2498

A BILL TO UNIFY, CONSOLIDATE, REVISE, AND CODIFY THE ARTICLES OF WAR, THE ARTICLES FOR THE GOVERNMENT OF THE NAVY, AND THE DISCIPLINARY LAWS OF THE COAST GUARD, AND TO ENACT AND ESTABLISH A UNIFORM CODE OF MILITARY JUSTICE

MARCH 7, 8, 9, 10, 14, 16, 17, 18, 21, 22, 23, 24, 25, 26, 30, 31,
APRIL 1, 2, AND 4, 1949

Printed for the use of the Committee on Armed Services

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UNIFORM CODE OF MILITARY JUSTICE

MONDAY, MARCH 7, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The committee met at 10 a. m., Hon. Overton Brooks (chairman of Subcommittee No. 1) presiding.

Mr. BROOKS. The committee will please come to order.

We have the pleasure of having the distinguished chairman of the committee here—to the right of me—and in view of the fact that the chairman is here I would be very happy for him to take the chair.

Mr. VINSON. Mr. Chairman, before we start the hearing on this bill, I want to suggest that on behalf of the committee Mr. Brooks of Louisiana and Mr. Short of Missouri prepare a suitable resolution expressing the deep sympathy on the passing of our former distinguished chairman, Mr. Andrews, and that they be sent to the members of his family.

I also suggest that the clerk on behalf of the committee secure a suitable floral offering and send that, and to advise the committee what he ascertains is going to be the program with reference to the funeral. I understood that probably there may be some exercise held here and if so, notify all the members so we can attend.

Now, Mr. Chairman, without objection the two gentlemen designated will prepare the resolution.

And before we take up this bill, today is consent calendar and we have three or four bills on the calendar, so we will have to recess at a quarter to 12.

And after we have the testimony of the distinguished Secretary of National Defense and Dr. Morgan—after they are finished—then I hope that the Subcommittee No. 1 will take this bill before its subcommittee and consider it section by section.

And tomorrow the Subcommittee No. 2 takes up the pay bill and will consider that bill.

That is all, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Chairman.

Mr. Clerk, will you call the roll and see if we have a quorum?

Mr. VINSON. I suggest, Mr. Chairman, that it is not necessary to have a quorum to start the hearings.

Mr. BROOK. It is suggested that a roll call be dispensed with. Accordingly, we will proceed.

We are honored today in having the Secretary of National Defense with us, Mr. Forrestal.

Secretary Forrestal, we are very happy to have you, sir. And I think you have a prepared statement here. May I say, in starting,

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that this is an extremely important bill. There are very few bills that come closer to my own mind and my heart than does a uniform code for military justice, to cover the armed services.

(H. R. 2498 is as follows:)

[H. R. 2498, 81st Cong., 1st sess.]

A BILL To unify, consolidate, revise, and codify the Articles of War, the Articles of the Government of the Navy, and the disciplinary laws of the Coast Guard, and to enact and establish a Uniform Code of Military Justice

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a Uniform Code of Military Justice for the government of the armed forces of the United States, unifying, consolidating, revising, and codifying the Articles of War, the Articles for the Government of the Navy, and the disciplinary laws of the Coast Guard, is hereby enacted as follows, and the articles in this section may be cited as "Uniform Code of Military Justice, Article ".

UNIFORM CODE OF MILITARY JUSTICE

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PART I—GENERAL PROVISIONS

Article
1. Definitions.
2. Persons subject to the code.
3. Jurisdiction to try certain personnel.
4. Dismissed officer's right to trial by court-martial.
5. Territorial applicability of the code.
6. Judge advocates and legal officers.

ARTICLE 1. Definitions.

The following terms when used in this code shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

(1) "Department" shall be construed to refer, severally, to the Department of the Army, the Department of the Navy, the Department of the Air Force, and, except when the Coast Guard is operating as a part of the Navy, the Treasury Department;

(2) "Armed force" shall be construed to refer, severally, to the Army, the Navy, the Air Force, and, except when operating as a part of the Navy, the Coast Guard;

(3) "Navy" shall be construed to include the Marine Corps and, when operating as a part of the Navy, the Coast Guard;

(4) "The Judge Advocate General" shall be construed to refer, severally, to The Judge Advocates General of the Army, Navy, and Air Force, and, except when the Coast Guard is operating as a part of the Navy, the General Counsel of the Treasury Department;

(5) "Officer" shall be construed to refer to a commissioned officer including a commissioned warrant officer;

(6) "Superior officer" shall be construed to refer to an officer superior in rank or command;

(7) "Cadet" shall be construed to refer to a cadet of the United States Military Academy or of the United States Coast Guard Academy;

(8) "Midshipman" shall be construed to refer to a midshipman at the United States Naval Academy and any other midshipman on active duty in the naval service;

(9) "Enlisted person" shall be construed to refer to any person who is serving in an enlisted grade in any armed force;

(10) "Military" shall be construed to refer to any or all of the armed forces;

(11) "Accuser" shall be construed to refer to a person who signs and swears to the charges and to any other person who has an interest other than an official interest in the prosecution of the accused;

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(12) "Law officer" shall be construed to refer to an official of a general court-artial detailed in accordance with article 26;
(13) "Law specialist" shall be construed to refer to an officer of the Navy or oast Guard designated for special duty (law);
(14) "Legal officer" shall be construed to refer to any officer in the Navy or oast Guard designated to perform legal duties for a command.

RT. 2. Persons subject to the code.

The following persons are subject to this code:
(1) All persons belonging to a regular component of the armed forces, including ose awaiting discharge after expiration of their terms of enlistment; all volun-ers and inductees, from the dates of their muster or acceptance into the armed rces of the United States; and all other persons lawfully called, drafted, or dered into, or to duty in or for training in, the armed forces, from the dates they e required by the terms of the call, draft, or order to obey the same;
(2) Cadets, aviation cadets, and midshipmen;
(3) Reserve personnel who are voluntarily on inactive duty training authorized written orders;
(4) Retired personnel of a regular component of the armed forces who are en-led to receive pay;
(5) Retired personnel of a reserve component who are receiving hospital bene-s from an armed force;
(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve;
(7) All persons in custody of the armed forces serving a sentence imposed by a urt-martial;
(8) Personnel of the Coast and Geodetic Survey, Public Health Service, and her organizations, when serving with the armed forces of the United States;
(9) Prisoners of war in custody of the armed forces;
(10) In time of war, all persons serving with or accompanying an armed force the field;
(11) All persons serving with, employed by, accompanying, or under the super-ision of the armed forces without the continental limits of the United States and ie following territories: That part of Alaska east of longitude one hundred and enty-two degrees west, the Canal Zone, the main group of the Hawaiian Is-nds, Puerto Rico, and the Virgin Islands;
(12) All persons within an area leased by the United States which is under the ontrol of the Secretary of a Department and which is without the continental mits of the United States and the following territories: That part of Alaska east f longitude one hundred and seventy-two degrees west, the Canal Zone, the ain group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands.

RT. 3. Jurisdiction to try certain personnel.

(a) Reserve personnel of the armed forces who are charged with having com-itted, while in a status in which they are subject to this code, any offense against his code may be retained in such status or, whether or not such status has termi-ated, placed in an active-duty status for disciplinary action, without their con-ent, but not for a longer period of time than may be required for such action.
(b) All persons discharged from the armed forces subsequently charged with aving fraudulently obtained said discharge shall be subject to trial by court-nartial on said charge and shall be subject to this code while in the custody of he armed forces for such trial. Upon conviction of said charge they shall be ubject to trial by court-martial for all offenses under this code committed prior to the fraudulent discharge.
(c) Any person who has deserted from the armed forces shall not be relieved from amenability to the jurisdiction of this code by virtue of a separation from any subsequent period of service.

ART. 4. Dismissed officer's right to trial by court-martial.

(a) When any officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a gen-eral court-martial to try such officer on the charges on which he was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on such charges, and he shall be held to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, is finally ap-proved or affirmed, does not include dismissal or death, the Secretary of the De-

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partment shall substitute for the dismissal order by the President a form of discharge authorized for administrative issuance.

(b) If the President fails to convene a general court martial within six months from the presentation of an application for trial under this article, the Secretary of the Department shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issuance.

(c) Where a discharge is substituted for a dismissal under the authority of this article, the President alone may reappoint the officer to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowances.

(d) When an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, there shall not be a right to trial under this article.

ART. 5. Territorial applicability of the code.

This code shall be applicable in all places.

ART. 6. Judge advocates and legal officers.

(a) The assignment for duty of all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be subject to the approval of The Judge Advocate General of the armed force of which they are members. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is authorized to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with The Judge Advocate General.

(c) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case shall subsequently act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

PART II—APPREHENSION AND RESTRAINT

Article

7. Apprehension.
8. Apprehension of deserters.
9. Imposition of restraint.
10. Restraint of persons charged with offenses.
11. Reports and receiving of prisoners.
12. Confinement with enemy prisoners prohibited.
13. Punishment prohibited before trial.
14. Delivery of offenders to civil authorities.

ART. 7. Apprehension.

(a) Apprehension is the taking into custody of a person.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this code may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) All officers, warrant officers, petty officers, and noncommissioned officers shall have authority to quell all quarrels, frays, and disorders among persons subject to this code and to apprehend presons subject to this code who take part in the same.

ART. 8. Apprehension of deserters.

It shall be lawful for any civil officer having authority to apprehend offenders under the laws of the United States or of any State, District, Territory, or possession of the United States summarily to apprehend a deserter from the armed forces of the United States and deliver him into the custody of the armed forces of the United States.

ART. 9. Imposition of restraint.

(a) Arrest is the restraint of a person by an order directing him to remain within certain specified limits not imposed as a punishment for an offense. Confinement is the physical restraint of a person.

(b) An enlisted person may be ordered into arrest or confinement by any officer by an order delivered in person or through other persons subject to this

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code. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted persons of his command or subject to his authority into arrest or confinement.

(c) An officer, a warrant officer, or a civilian subject to this code may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order delivered in person or by another officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person shall be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

ART. 10. Restraint of persons charged with offenses.

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

ART. 11. Reports and receiving of prisoners.

(a) No provost marshal, commander of a guard, or master at arms shall refuse to receive or keep any prisoner committed to his charge by an officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after such commitment or as soon as he is relieved from guard, report to the commanding officer the name of such prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

ART. 12. Confinement with enemy prisoners prohibited.

No member of the armed forces of the United States shall be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States.

ART. 13. Punishment prohibited before trial.

Subject to the provisions of article 57, no person, while being held for trial or the results of trial, shall be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to punishment during such period for minor infractions of discipline.

ART. 14. Delivery of offenders to civil authorities.

(a) Under such regulations as the Secretary of the Department may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, such delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon request, be returned to military custody for the completion of the said court-martial sentence.

PART III.—NON-JUDICIAL PUNISHMENT

Article
15. Commanding officer's non-judicial punishment.

ART. 15. Commanding officer's non-judicial punishment.

(a) Under such regulations as the President may prescribe, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers and warrant officers of his command:

(A) Withholding of privileges for a period not to exceed two consecutive weeks; or

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(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) if imposed by an officer exercising general court-martial jurisdiction, forfeiture of one-half of his pay per month for a period not exceeding three months;

(2) upon other military personnel of his command:

(A) withholding of privileges for a period not to exceed two consecutive weeks; or

(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) extra duties for a period not to exceed two consecutive weeks, and not to exceed two hours per day, holidays included; or

(D) reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command; or

(E) confinement for a period not to exceed seven consecutive days; or

(F) confinement on bread and water or diminished rations for a period not to exceed five consecutive days; or

(G) if imposed by an officer exercising special court-martial jurisdiction, forfeiture of one-half of his pay for a period not exceeding one month.

(b) The Secretary of a Department may, by regulation, place limitations on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers authorized to exercise such powers, and the applicability of this article to an accused who demands trial by court martial.

(c) An officer in charge may, for minor offenses, impose on enlisted persons assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the Secretary of the Department may by regulation specifically prescribe.

(d) A person punished under authority of this article who deems his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority shall have power to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges, and property affected.

(e) The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

PART IV—COURTS-MARTIAL JURISDICTION

Article
16. Courts-martial classified.
17. Jurisdiction of courts-martial in general.
18. Jurisdiction of general courts-martial.
19. Jurisdiction of special courts-martial.
20. Jurisdiction of summary courts-martial.
21. Jurisdiction of courts-martial not exclusive.

ART. 16. Courts-martial classified.

There shall be three kinds of courts-martial in each of the armed forces, namely:

(1) General courts-martial, which shall consist of a law officer and any number of members not less than five;

(2) Special courts-martial, which shall consist of any number of members not less than three; and

(3) Summary courts-martial, which shall consist of one officer.

ART. 17. Jurisdiction of courts-martial in general.

(a) Each armed force shall have court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review subsequent to that by the officer with authority to convene a general court-martial for the command which held the

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trial, where such review is required under the provisions of this code, shall be carried out by the armed force of which the accused is a member.

ART. 18. Jurisdiction of general courts-martial.

Subject to article 17, general courts-martial shall have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this code. General courts-martial shall also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war.

ART. 19. Jurisdiction of special courts-martial.

Subject to article 17, special courts-martial shall have jurisdiction to try persons subject to this code for any noncapital offense made punishable by this code and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this code except death, dishonorable discharge, dismissal, confinement in excess of six months, hard labor without confinement in excess of three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for a period exceeding six months. A bad-conduct discharge shall not be adjudged unless a complete record of the proceedings and testimony before the court has been made.

ART. 20. Jurisdiction of summary courts-martial.

Subject to article 17, summary courts-martial shall have jurisdiction to try persons subject to this code except officers, warrant officers, cadets, aviation cadets, and midshipmen for any noncapital offense made punishable by this code, but no person who objects htereto shall be brought to trial before a summary court-martial unless he has been permitted to refuse punishment under article 15. Where such objection is made by the accused, trial shall be ordered by special or general court-martial, as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this code except death, dismissal, dishonorable or bad-conduct discharge, confinement in excess of one month, hard labor without confinement in excess of forty-five days, restriction to certain specified limits in excess of two months, or forfeiture of pay in excess of two-thirds of one month's pay.

ART. 21. Jurisdiction of courts-martial not exclusive.

The provisions of this code conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war may be tried by such military commissions, provost courts, or other military tribunals.

PART V—APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

Article

22. Who may convene general courts-martial.
23. Who may convene special courts-martial.
24. Who may convene summary courts-martial.
25. Who may serve on courts-martial.
26. Law officer of a general court-martial.
27. Appointment of trial counsel and defense counsel.
28. Appointment of reporters and interpreters.
29. Absent and additional members.

ART. 22. Who may convene general courts-martial.

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary of a Department;

(3) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army;

(4) the Commander in Chief of a Fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the continental limits of the United States;

(5) the commanding officer of an Air Command, and Air Force, an air division, or a separate wing of the Air Force;

(6) such other commanding officers as may be designated by the Secretary of a Department; or

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(7) any other commanding officer in any of the armed forces when empowered by the President.

(b) When any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed desirable by him.

ART. 23. Who may convene special courts-martial.

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; or of any marine brigade, regiment or barracks;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary of a Department.

(b) When any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened, by such authority when deemed advisable by him.

ART. 24. Who may convene summary courts-martial.

(a) Summary courts-martial may be convened by—

(1) any person who may convene a genreal or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary of a Department.

(b) When but one officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when deemed desirable by him.

ART. 25. Who may serve on courts-martial.

(a) Any officer on active duty with the armed forces shall be competent to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty with the armed forces shall be competent to serve on general and special courts-martial for the trial of any person, other than an officer, who may lawfully be brought before such courts for trial.

(c) Any enlisted person on active duty with the armed forces who is not a member of the same unit as the accused shall be competent to serve on general and special courts-martial for the trial of any enlisted person who may lawfully be brought before such courts for trial, but he shall be appointed as a member of a court only if, prior to the convening of such court, the accused has requested in writing that enlisted persons serve on it. After such a request, no enlisted person shall be tried by a general or special court-martial the membership of which does not include enlisted persons in a number comprising at least one-third of the total membership of the court, unless competent enlisted persons cannot be obtained on account of physical conditions or military exigencies. Where such persons cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

For the purposes of this article, the word "unit" shall mean any regularly organized body as defined by the Secretary of the Department, but in no case shall it be a body larger than a company, a squadron, or a ship's crew, or than a body corresponding to one of them.

(d) (1) When it can be avoided, no person in the armed forces shall be tried by a court-martial any member of which is junior to him in rank or grade.

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(2) When convening a court-martial, the convening authority shall appoint as members thereof such persons as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No person shall be eligible to sit as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

ART. 26. Law officer of a general court-martial.

(a) The authority convening a general court-martial shall appoint as law officer thereof an officer who is a member of the bar of a Federal court or of the highest court of a State of the United States and who is certified to be qualified for such duty by The Judge Advocate General of the armed force of which he is a member. No person shall be eligible to act as law officer in a case when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer shall not consult with the members of the court, other than on the form of the findings as provided in article 39, except in the presence of the accused, trial counsel, and defense counsel, nor shall he vote with the members of the court.

ART. 27. Appointment of trial counsel and defense counsel.

(a) For each general and special court-martial the authority convening the court shall appoint a trial counsel and a defense counsel, together with such assistants as he deems necessary or appropriate. No person who has acted as investigating officer, law officer, or court member in any case shall act subsequently as trial counsel assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act subsequently in the same case for the defense, nor shall any person who has acted for the defense act subsequently in the same case for the prosecution.

(b) Any person who is appointed as trial counsel or defense counsel in the case of a general court-martial—

(1) shall be a judge advocate of the Army or the Air Force, or a law specialist of the Navy or Coast Guard, or a person who is a member of the bar of a Federal court or of the highest court of a State; and

(2) shall be certified as competent to perform such duties by The Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) if the trial counsel is certified as competent to act as counsel before a general court-martial by The Judge Advocate General of the armed force of which he is a member, the defense counsel appointed by the convening authority shall be a person similarly certified; and

(2) if the trial counsel is a judge advocate, or a law specialist, or a member of the bar of a Federal court or the highest court of a State, the defense counsel appointed by the convening authority shall be one of the foregoing.

ART. 28. Appointment of reporters and interpreters.

Under such regulations as the Secretary of the Department may prescribe, the convening authority of a court-martial or military commission or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may appoint an interpreter who shall interpret for the court or commission.

ART. 29. Absent and additional members.

(a) No member of a general or special court-martial shall be absent or excused after the accused has been arraigned except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court martial is reduced below five members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When such new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel.

(c) Whenever a special court martial is reduced below three members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than three members. When such new members

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have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

PART VI—PRETRIAL PROCEDURE

Article

30. Charges and specifications.
31. Compulsory self-incrimination prohibited.
32. Investigation.
33. Forwarding of charges.
34. Advice of staff judge advocate and reference for trial.
35. Service of charges.

ART. 30. Charges and specifications.

(a) Charges and specifications shall be signed by a person subject to this code under oath before an officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) that the same are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

ART. 31. Compulsory self-incrimination prohibited.

(a) No person subject to this code shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this code shall interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement at all regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this code shall compel any person to make a statement or produce evidence before or for use before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article or by any unlawful inducement shall be received in evidence against him in a trial by court-martial.

ART. 32. Investigation.

(a) No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiries as to the truth of the matter set forth in the charges, form of charges, and the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and shall be permitted, upon his own request, to be represented at such investigation by civilian counsel if provided by him, or military counsel of his own selection if such counsel be reasonably available, or by counsel appointed by the officer exercising general court-martial jurisdiction over the command. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted prior to the time the accused is charged with the offense, and if the accused was present at such investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subdivision (b) of this article, no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this article shall be binding on all persons administering this code, but failure to follow them in any case shall not constitute jurisdictional error.

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ART. 33. Forwarding of charges.

When a person is held for trial by general court-martial, the commanding officer all, within eight days after the accused is ordered into arrest or confinement, if acticable, forward the charges, together with the investigation and allied papers, the officer exercising general court-martial jurisdiction. If the same is not acticable, he shall report to such officer the reasons for delay.

ART. 34. Advice of staff judge advocate and reference for trial.

(a) Before directing the trial of any charge by general court-martial, the conning authority shall refer it to his staff judge advocate or legal officer for considation and advice. The convening authority shall not refer a charge to a general urt-martial for trial unless it has been found that the charge alleges an offense der this code and is warranted by evidence indicated in the report of investition.

(b) If the charges or specifications are not formally correct or do not conform the substance of the evidence contained in the report of the investigating icer, formal corrections, and such changes in the charges and specifications as e needed to make them conform to the evidence may be made.

ART. 35. Service of charges.

The trial counsel to whom court-martial charges are referred for trial shall use to be served upon the accused a copy of the charges upon which trial is be had. In time of peace no person shall, against his objection, be brought to al before a general court-martial within a period of five days subsequent to the rvice of the charges upon him, or before a special court-martial within a period three days subsequent to the service of the charges upon him.

PART VII—TRIAL PROCEDURE

Article

President may prescribe rules.
Unlawfully influencing action of court.
Duties of trial counsel and defense counsel.
Sessions.
Continuances.
Challenges.
Oaths.
Statute of limitations.
Former jeopardy.
Pleas of the accused.
Opportunity to obtain witnesses and other evidence.
Refusal to appear or testify.
Contempts.
Depositions.
Admissibility of records of courts of inquiry.
Voting and rulings.
Number of votes required.
Court to announce action.
Record of trial.

ART. 36. President may prescribe rules.

(a) The procedure, including modes of proof, in cases before courts-martial, ourts of inquiry, military commissions, and other military tribunals may be prescribed by the President by regulations which shall, so far as he deems practicable, pply the principles of law and the rules of evidence generally recognized in the rial of criminal cases in the United States district courts, but which shall not be ontrary to or inconsistent with this code.

(b) All rules and regulations made in pursuance of this article shall be reported o the Congress.

ART. 37. Unlawfully influencing action of court.

No authority convening a general, special, or summary court-martial, nor any ther commanding officer, shall censure, reprimand, or admonish such court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions n the conduct of the proceeding. No person subject to this code shall attempt o coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or entence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

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ART. 38. Duties of trial counsel and defense counsel.

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused shall have the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel duly appointed pursuant to article 27. Should the accused have counsel of his own selection, the duly appointed defense counsel, and assistant defense counsel, if any, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he may deem appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by article 27, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by article 27, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

ART. 39. Sessions.

Whenever a general or special court-martial is to deliberate or vote, only the members of the court shall be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and such proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer shall be made a part of the record and be in the presence of the accused, the defense counsel, the trial counsel, and in general court-martial cases, the law officer.

ART. 40. Continuances.

A court-martial may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just.

ART. 41. Challenges.

(a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and shall not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) The accused and trial counsel shall each be entitled to one peremptory challenge, but the law officer shall not be challenged except for cause.

ART. 42. Oaths.

(a) The law officer, all interpreters, and, in general and special courts-martial, the members, the trial counsel, assistant trial counsel, the defense counsel, assistant defense counsel, and the reporter shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(b) All witnesses before courts-martial shall be examined on oath or affirmation.

ART. 43. Statute of limitations.

(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under articles 119 through 132 inclusive shall not be liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this article, a person charged with any offense shall not be liable to be tried by court-martial or punished under article

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15 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under article 15.

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) In the case of any offense the trial of which in time of war is certified to the President by the Secretary of the Department to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article shall be extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not; or

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

ART. 44. Former jeopardy.

No person shall, without his consent, be tried a second time for the same offense; but no proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

ART. 45. Pleas of the accused.

(a) If an accused arraigned before a court-martial makes any irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused shall not be received in a capital case.

ART. 46. Opportunity to obtain witnesses and other evidence.

The trial counsel, defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, its Territories, and possessions.

ART. 47. Refusal to appear or testify.

(a) Every person not subject to this code who—

(1) has been duly subpenaed to appear as a witness before any court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such court, commission or board; and

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which such person may have been legally subpenaed to produce;

shall be deemed guilty of an offense against the United States.

(b) Any person who commits an offense denounced by this article shall be tried on information in a United States district court or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, and jurisdiction is hereby conferred upon such courts for such purpose. Upon con-

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viction, such persons shall be punished by a fine of not more than $500, or imprisonment for a period not exceeding six months, or both.

(c) It shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

ART. 48. Contempts.

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder. Such punishment shall not exceed confinement for thirty days or a fine of $100, or both.

ART. 49. Depositions.

(a) At any time after charges have been signed as provided in article 30, any party may take oral or written depositions unless an authority competent to convene a court-martial for the trial of such charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate officers to represent the prosecution and the defense and may authorize such officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other party, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Territory, or District in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing; or

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Testimony by deposition may be adduced by the defense in capital cases.

(f) A deposition may be read in evidence in any case in which the death penalty is authorized by law but is not mandatory, whenever the convening authority shall have directed that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

ART. 50. Admissibility of records of courts of inquiry.

(a) In any case not capital and not extending to the dismissal of an officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible, be read in evidence by any party before a court-martial or military commission if the accused was a party and was accorded the rights of an accused when before the court of inquiry or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of an officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

ART. 51. Voting and rulings.

(a) Voting by members of a general or special court martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The law officer of a general court martial and the president of a special court martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a

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general court martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of accused's sanity, shall be final and shall constitute the ruling of the court; but the law officer may change any such ruling at any time during the trial. Unless such ruling be final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in article 52, viva voce, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general court martial and the president of a special court martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

(3) that if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no such doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the Government.

ART. 52. Number of votes required.

(a) (1) No person shall be convicted of an offense for which the death penalty is made mandatory by law except by the concurrence of all the members of the court martial present at the time the vote is taken.

(2) No person shall be convicted of any other offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) (1) No person shall be sentenced to suffer death, except by the concurrence of all the members of the court martial present at the time the vote is taken and for an offense in this code made expressly punishable by death.

(2) No person shall be sentenced to life imprisonment or to confinement in excess of ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge shall disqualify the member challenged. A tie vote on a motion for a finding of not guilty or on a question of the accused's sanity shall be a determination against the accused. A tie vote on any other question shall be a determination in favor of the accused.

ART. 53. Court to announce action.

Every court-martial shall announce its findings and sentence to the parties as soon as determined.

ART. 54. Record of trial.

(a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the law officer. In case the record cannot be authenticated by either the president or the law officer, by reason of the death, disability, or absence of such officer, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable for such reasons, the record shall be authenticated by two members.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated.

PART VIII—SENTENCES

Article

55. Cruel and unusual punishments prohibited.
56. Maximum limits.
57. Effective date of sentences.
58. Execution of confinement.

ART. 55. Cruel and unusual punishments prohibited.

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, shall not be adjudged by any court-

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martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

ART. 56. Maximum limits.

The punishment which a court-martial may direct for an offense shall not exceed such limits as the President may prescribe for that offense.

ART. 57. Effective date of sentences.

(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date such sentence is approved by the convening authority. No forfeiture shall extend to any pay or allowances accrued before such date.

(b) Any period of confinement not suspended included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial.

(c) All other sentences of courts-martial shall become effective on the date ordered executed.

ART. 58. Execution of confinement.

(a) Under such instructions as the Department concerned may prescribe, any sentence of confinement adjudged by a court-martial or other military tribunal, whether or not such sentence includes discharge or dismissal, and whether or not such discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces, or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use; and persons so confined in a penal or correctional institution not under the control of one of the armed forces shall be subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District, or place in which the institution is situated.

(b) The omission of the words "hard labor" in any sentence of a court-martial adjudging confinement shall not be construed as depriving the authority executing such sentence of the power to require hard labor as a part of the punishment.

PART IX—REVIEW OF COURTS-MARTIAL

Article

59. Error of law; lesser included offense.
60. Initial action on the record.
61. Same—General court-martial records.
62. Reconsideration and revision.
63. Rehearings.
64. Approval by the convening authority.
65. Disposition of records after review by the convening authority.
66. Review by the board of review.
67. Review by the judicial council.
68. Branch offices.
69. Review in the office of The Judge Advocate General.
70. Appellate counsel.
71. Execution of sentence; suspension of sentence.
72. Vacation of suspension.
73. Petition for a new trial.
74. Remission and suspension.
75. Restoration.
76. Finality of court-martial judgments.

ART. 59. Error of law; lesser included offense.

(a) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

ART. 60. Initial action on the record.

After every trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the officer who convened the court, an officer commanding for the time being, a successor in command, or by any officer exercising general court-martial jurisdiction.

ART. 61. Same—General court-martial records.

The convening authority shall refer the record of every general court-martial to his staff judge advocate or legal officer, who shall submit his written opinion

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reon to the convening authority. If the final action of the court has resulted an acquittal of all charges and specifications, the opinion shall be limited to stions of jurisdiction and shall be forwarded with the record to The Judge vocate General of the armed force of which the accused is a member.

T. 62. Reconsideration and revision.

a) If a case before a court-martial has been dismissed on motion and the ruling s not amount to a finding of not guilty, the convening authority may return record to the court for reconsideration of the ruling and any further appropriate ion.

b) Where there is an apparent error or omission in the record or where the ord shows improper action by a court-martial with respect to a finding or tence which can be rectified without material prejudice to the substantial hts of the accused, the convening authority may return the record to the court appropriate action. In no case, however, may the record be returned—

(1) for reconsideration of a finding of not guilty or a ruling which amounts to a finding of not guilty; or

(2) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

T. 63. Rehearings.

(a) If the convening authority disapproves the findings and sentence of a urt-martial he may, except where there is lack of sufficient evidence in the record support the findings, order a rehearing, in which case he shall state the reasons for approval. If he does not order a rehearing, he shall dismiss the charges.

(b) Every rehearing shall take place before a court-martial composed of embers not members of the court-martial which first heard the case. Upon such hearing the accused shall not be tried for any offense of which he was found not uilty by the first court-martial, and no sentence in excess of or more severe than e original sentence shall be imposed unless the sentence is based upon a finding of uilty of an offense not considered upon the merits in the original proceedings or uless the sentence prescribed for the offense is mandatory.

RT. 64. Approval by the convening authority.

In acting on the findings and sentence of a court-martial, the convening authority ıall approve only such findings of guilty, and the sentence or such part or amount the sentence, as he finds correct in law and fact and determines should be pproved. Unless he indicates otherwise, approval of the sentence shall constitute pproval of the findings and sentence.

RT. 65. Disposition of records after review by the convening authority.

(a) When the convening authority has taken final action in a general court-ıartial case, he shall forward the entire record, including his action thereon and he opinion or opinions of the staff judge advocate or legal officer, to the appro-riate Judge Advocate General.

(b) Where the sentence of a special court-martial as approved by the convening uthority includes a bad-conduct discharge, whether or not suspended, the record hall be forwarded to the officer exercising general court-martial jurisdiction ver the command to be reviewed in the same manner as a record of trial by general court-martial or directly to the appropriate Judge Advocate General to e reviewed by a board of review. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record shall be forwarded to the appropriate Judge Advocate General to be reviewed by a board of review.

(c) All other special and summary court-martial records shall be reviewed by a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or Treasury Department and shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations.

ART. 66. Review by the board of review.

(a) The Judge Advocate General of each of the armed forces shall constitute in his office one or more boards of review, each composed of not less than three officers or civilians, each of whom shall be a member of the bar of a Federal court or of the highest court of a State of the United States.

(b) The Judge Advocate General shall refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer or extends to death, dismissal of an officer, cadet, or mid-

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shipman, dishonorable or bad-conduct discharge, or confinement for more than one year.

(c) In a case referred to it, the board of review shall act only with respect to the findings and sentence as approved by the convening authority. It shall affirm only such findings of guilty, and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it shall have authority to weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the board of review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. . Otherwise it shall order that the charges be dismissed.

(e) Within ten days after any decision by a board of review, the Judge Advocate General may refer the case for reconsideration to the same or another board of review.

(f) Otherwise, the Judge Advocate General shall, unless there is to be further action by the President or the Secretary of the Department or the Judicial Council, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) The Judge Advocates General of the armed forces shall prescribe uniform rules of procedure for proceedings in and before boards of review and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by the boards of review.

ART. 67. Review by the Judicial Council.

(a) There is hereby established in the National Military Establishment a Judicial Council. The Judicial Council shall be composed of not less than three members. Each member of the Judicial Council shall be appointed by the President from civilian life and shall be a member of the bar admitted to practice before the Supreme Court of the United States, and each member shall receive compensation and allowances equal to those paid to a judge of a United States Court of Appeals.

(b) Under rules of procedure which it shall prescribe, the Judicial Council shall review the record in the following cases:

(1) All cases in which the sentence, as affirmed by a board of review, affects a general or flag officer or extends to death;

(2) All cases reviewed by a board of review which The Judge Advocate General orders forwarded to the Judicial Council for review; and

(3) All cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the Judicial Council has granted a review.

(c) The accused shall have thirty days from the time he is notified of the decision of a board of review to petition the Judicial Council for a grant of review. The Judicial Council shall act upon such a petition within fifteen days of the receipt thereof.

(d) In any case reviewed by it, the Judicial Council shall act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the board of review. In a case which The Judge Advocate General orders forwarded to the Judicial Council, such action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, such action need be taken only with respect to issues specified in the grant of review. The Judicial Council shall take action only with respect to matters of law.

(e) If the Judicial Council sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. Otherwise it shall order that the charges be dismissed.

(f) After it has acted on a case, the Judicial Council may direct The Judge Advocate General to return the record to the board of review for further review in accordance with the decision of the Judicial Council. Otherwise unless there is to be further action by the President, or the Secretary of the Department, The Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the Judicial Council has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

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The Judicial Council and The Judge Advocate General of the armed forces meet annually to make a comprehensive survey of the operation of this code report to the Secretary of Defense and the Secretaries of the Departments recommendations relating to uniformity of sentence policies, amendments is code, and any other matters deemed appropriate.

68. Branch offices.

) Whenever the President deems such action necessary, he may direct The e Advocate General to establish a branch office, under an Assistant Judge ocate General, with any distant command, and to establish in such branch e one or more boards of review. Such Assistant Judge Advocate General any such board of review shall be empowered to perform for that command, r the general supervision of The Judge Advocate General, the duties which Judge Advocate General and a board of review in his office would otherwise equired to perform in respect of all cases involving sentences not requiring oval by the President.

) In time of emergency, the President may direct that one or more temporary icial Councils be established for the period of the emergency, each of which l be under the general supervision of the Judicial Council.

. 69. Review in the office of The Judge Advocate General.

very record of trial by general court-martial, in which there has been a ding of guilty and a sentence, the appellate review of which is not otherwise vided for by article 66, shall be examined in the office of The Judge Advocate neral. If any part of the findings or sentence is found unsupported in law, or The Judge Advocate General so directs, the record shall be reviewed by a ard of review in accordance with article 66, but in such event there will be no ther review by the Judicial Council.

T. 70. Appellate counsel.

a) The Judge Advocate General shall appoint in his office one or more officers appellate Government counsel, and one or more officers as appellate defense unsel.

b) It shall be the duty of appellate Government counsel to represent the ited States before the board of review or the Judicial Council when directed do so by The Judge Advocate General.

(c) It shall be the duty of appellate defense counsel to represent the accused fore the board of review or the Judicial Council—

(1) when he is requested to do so by the accused; or

(2) when the United States is represented by counsel; or

(3) when The Judge Advocate General has requested the reconsideration of a case before the board of review or has transmitted it to the Judicial Council.

(d) The accused shall have the right to be represented before the Judicial ouncil or the board of review by civilian counsel if provided by him.

(e) The appellate counsel shall also perform such other functions in connection ith the review of court-martial cases as The Judge Advocate General shall direct.

RT. 71. Execution of sentence; suspension of sentence.

(a) No court-martial sentence extending to death or involving a general or ag officer shall be executed until approved by the President. He shall approve he sentence or such part, amount, or commuted form of the sentence as he sees t, and may suspend the execution of the sentence or any part of the sentence, s approved by him, except a death sentence.

(b) No sentence extending to the dismissal of an officer, cadet, or midshipman hall be executed until approved by the Secretary of the Department, or such Under Secretary or Assistant Secretary as may be designated by him. He hall approve the sentence or such part, amount, or commuted form of the entence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person who is so educed may be required to serve for the duration of the war or emergency and six months thereafter.

(c) No sentence which includes, unsuspended, a dishonorable or bad conduct discharge, or confinement for more than one year shall be executed until affirmed by a board of review and, in cases reviewed by it, the Judicial Council.

(d) All other court-martial sentences, unless suspended, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.

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ART. 72. Vacation of suspension.

(a) Prior to the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at such hearing by counsel if he so desires.

(b) The record of the hearing and the recommendations of the officer having special court-martial jurisdiction shall be forwarded for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, the vacation shall be effective, subject to applicable restrictions in article 71 (c), to execute any unexecuted portion of the sentence except a dismissal. The vacation of the suspension of a dismissal shall not be effective until approved by the Secretary of the Department.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

ART. 73. Petition for a new trial.

At any time within one year after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for more than one year, the accused may petition The Judge Advocate General for a new trial on grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before the board of review or before the Judicial Council, The Judge Advocate General shall refer the petition to the board or Council, respectively, for action. Otherwise The Judge Advocate General shall act upon the petition.

ART. 74. Remission and suspension.

(a) The Secretary of the Department and any Under Secretary, Assistant Secretary, or commanding officer designated by the Secretary may remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President.

(b) The Secretary of the Department may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

ART. 75. Restoration.

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the new trial or rehearing.

(b) Where a previously executed sentence of dishonorable or bad-conduct discharge is not sustained on a new trial, the Secretary of the Department shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) Where a previously executed sentence of dismissal is not sustained on a new trial, the Secretary of the Department shall substitute therefor a form of discharge authorized for administrative issuance and the officer dismissed by such sentence may be reappointed by the President alone to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowances.

ART. 76. Finality of court-martial judgments.

The appellate review of records of trial provided by this code, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this code, and all dismissals and discharges carried into execution pursuant to sentences by courts-martial following approval, review, or affirmation as required by this code, shall be final and conclusive, and orders publishing the proceedings of courts-martial and all action taken pursuant to such proceedings shall be binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in article 73 and to action by the Secretary of a Department as provided in article 74.

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Part X—Punitive Articles

Principals.
Accessory after the fact.
Conviction of lesser included offense.
Attempts.
Conspiracy.
Solicitation.
Fraudulent enlistment, appointment, or separation.
Unlawful enlistment, appointment, or separation.
Desertion.
Absence without leave.
Missing movement.
Disrespect towards officials.
Disrespect towards superior officer.
Assaulting or willfully disobeying officer.
Insubordinate conduct towards noncommissioned officer.
Failure to obey order or regulation.
Cruelty and maltreatment.
Mutiny or sedition.
Arrest and confinement.
Releasing prisoner without proper authority.
Unlawful detention of another.
Non-compliance with procedural rules.
Misbehavior before the enemy.
Subordinate compelling surrender.
Improper use of countersign.
Forcing a safeguard.
Captured or abandoned property.
Aiding the enemy.
Misconduct as prisoner.
Spies.
False official statements.
Military property of United States—Loss, damage, destruction, or wrongful disposition.
Property other than military property of United States—Waste, spoil, or destruction.
Improper hazarding of vessel.
Drunken or reckless driving.
Drunk on duty.
Misbehavior of sentinel.
Dueling.
Malingering.
Riot or breach of peace.
Provoking speeches or gestures.
Murder.
Manslaughter.
Rape.
Larceny.
Robbery.
Forgery.
Maiming.
Sodomy.
Arson.
Extortion.
Assault.
Burglary.
Housebreaking.
Perjury.
Frauds against the Government.
Conduct unbecoming an officer and gentleman.
General article.

ART. 77. Principals.

Any person punishable under this code who—

(1) commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this code;

shall be punished with the punishment provided for the commission of the offense.

ART. 78. Accessory after the fact.

Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

ART. 79. Conviction of lesser included offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

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ART. 80. Attempts.

(a) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending but failing to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

ART. 81. Conspiracy.

Any person subject to this code who conspires with any other person or persons to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

ART. 82. Solicitation.

(a) Any person subject to this code who solicits or advises another or others to desert in violation of article 85 or mutiny in violation of article 94 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of article 99 or sedition in violation of article 94 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

ART. 83. Fraudulent enlistment, appointment, or separation.

Any person who—

(1) procures his own enlistment or appointment in the armed forces by means of knowingly false representations or deliberate concealment as to his qualifications for such enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by means of knowingly false representations or deliberate concealment as to his eligibility for such separation;

shall be punished as a court-martial may direct.

ART. 84. Unlawful enlistment, appointment, or separation.

Any person subject to this code who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

ART. 85. Desertion.

(a) Any member of the armed forces of the United States who—

(1) without proper authority goes or remains absent from his place of service, organization, or place of duty with intent to remain away therefrom permanently; or

(2) quits his unit or organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact he has not been so regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any officer of the armed forces who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post at proper duty without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempted desertion shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempted desertion occurs at any other time, by such punishment, other than death, as a court-martial may direct.

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ART. 86. Absence without leave.

Any person subject to this code who, without proper authority—

(1) fails to go to his appointed place of duty at the time prescribed; or

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or other place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

ART. 87. Missing movement.

Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

ART. 88. Disrespect towards officials.

Any officer who uses contemptuous or disrespectful words against the President, Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States in which he is on duty or present shall be punished as a court-martial may direct.

ART. 89. Disrespect towards superior officer.

Any person subject to this code who behaves with disrespect towards his superior officer shall be punished as a court-martial may direct.

ART. 90. Assaulting or willfully disobeying officer.

Any person subject to this code who—

(1) strikes his superior officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

ART. 91. Insubordinate conduct towards noncommissioned officer.

Any warrant officer or enlisted person who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while such officer is in the execution of his office; or

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment towards a warrant officer, noncommissioned officer, or petty officer while such officer is in the execution of his office;

shall be punished as a court-martial may direct.

ART. 92. Failure to obey order or regulation.

Any person subject to this code who—

(1) violates or fails to obey any lawful general order or regulation; or

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the same; or

(3) is derelict in the performance of his duties; shall be punished as a court-martial may direct.

ART. 93. Cruelty and maltreatment.

Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

ART. 94. Mutiny or sedition.

(a) Any person subject to this code—

(1) who with intent to usurp or override lawful military authority refuses, in concert with any other person or persons, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) who with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person or persons, revolt, violence, or other disturbance against such authority is guilty of sedition;

(3) who fails to do his utmost to prevent and suppress an offense of mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior or commanding officer of an offense of

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mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

ART. 95. Arrest and confinement.

Any person subject to this code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

ART. 96. Releasing prisoner without proper authority.

Any person subject to this code who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct.

ART. 97. Unlawful detention of another.

Any person subject to this code who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

ART. 98. Noncompliance with procedural rules.

Any person subject to this code who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

ART. 99. Misbehavior before the enemy.

Any member of the armed forces who before or in the presence of the enemy—

(1) runs away; or

(2) shamefully abandons, surrenders or delivers up any command, unit, place, or military property which it is his duty to defend; or

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property; or

(4) casts away his arms or ammunition; or

(5) is guilty of cowardly conduct; or

(6) quits his place of duty to plunder or pillage; or

(7) causes false alarms in any command, unit, or place under control of the armed forces; or

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

ART. 100. Subordinate compelling surrender.

Any person subject to this code who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

ART. 101. Improper use of countersign.

Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

ART. 102. Forcing a safeguard.

Any person subject to this code who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

ART. 103. Captured or abandoned property.

(a) All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over

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to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this code who—

(1) fails to carry out the duties prescribed in subdivision (a) of this article; or

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

ART. 104. Aiding the enemy.

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other thing; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.

ART. 105. Misconduct as prisoner.

Any person subject to this code who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

ART. 106. Spies.

Any person who in time of war is found lurking or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces of the United States, or in or about any shipyard, any manufacturing or industrial plant, or any other place of institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

ART. 107. False official statements.

Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct.

ART. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition.

Any person subject to this code who, without proper authority—

(1) sells or otherwise disposes of; or

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

ART. 109. Property other than military property of United States—Waste, spoil, or destruction.

Any person subject to this code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

ART. 110. Improper hazarding of vessel.

(a) Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

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(b) Any person subject to this code who negligently hazards or suffers to hazarded any vessel of the armed forces, shall be punished as a court-martial m direct.

ART. 111. Drunken or reckless driving.

Any person subject to this code who operates any vehicle while drunk, or i reckless or wanton manner, shall be punished as a court-martial may direct.

ART. 112. Drunk on duty.

Any person subject to this code, other than a sentinel or look-out, who is fou drunk on duty, shall be punished as a court-martial may direct.

ART. 113. Misbehavior of sentinel.

Any sentinel or look-out who is found drunk or sleeping upon his post, leaves it before he is regularly relieved shall be punished, if the offense is co mitted in time of war, by death or such other punishment as a court-martial m direct, but if the offense is committed at any other time, by such punishme other than death as a court-martial may direct.

ART. 114. Dueling.

Any person subject to this code who fights or promotes, or is concerned or connives at fighting a duel, or who, having knowledge of a challenge sent about to be sent, fails to report the fact promptly to the proper authority, sh be punished as a court-martial may direct.

ART. 115. Malingering.

Any person subject to this code who for the purpose of avoiding work, dut or service—

(1) feigns illness, physical disablement, mental lapse or derangement; o

(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

ART. 116. Riot or breach of peace.

Any person subject to this code who causes or participates in any riot or brea of the peace shall be punished as a court-martial may direct.

ART. 117. Provoking speeches or gestures.

Any person subject to this code who uses provoking or reproachful words gestures towards any other person subject to this code shall be punished as court-martial may direct.

ART. 118. Murder.

Any person subject to this code who, without justification or excuse, kills human being, when he—

(1) has a premediated design to kill; or

(2) intends to kill or inflict great bodily harm; or

(3) is engaged in an act which is inherently dangerous to others and evinc a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglar sodomy, rape, robbery, or aggravated arson, though he has no intent to ki is guilty of murder, and shall suffer such punishment as a court-martial m direct, except that if found guilty under paragraph (1) of this article, he sh suffer death or imprisonment for life as a court-martial may direct.

ART. 119. Manslaughter.

Any person subject to this code who, without a design to effect death, kills human being—

(1) in the heat of sudden passion; or

(2) by culpable negligence; or

(3) while perpetrating or attempting to perpetrate an offense, other th those specified in paragraph (4) of article 118, directly affecting the perso is guilty of manslaughter and shall be punished as a court-martial may direct.

ART. 120. Rape.

(a) Any person subject to this code who commits an act of sexual intercour with a female not his wife, by force and without her consent, is guilty of rape Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of rape shall be punished by death or such othe punishment as a court-martial may direct.

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121. Larceny.

y person subject to this code who, with intent to deprive or defraud another e use and benefit of property or to appropriate the same to his own use or se of any person other than the true owner, wrongfully takes, obtains, or olds, by any means whatever, from the possession of the true owner or of ther person any money, personal property, or article of value of any kind, such property and is guilty of larceny, and shall be punished as a court-al may direct.

122. Robbery.

y person subject to this code who with intent to steal takes anything of value the person or in the presence of another, against his will, by means of force or ıce or fear of immediate or future injury to his person or property or the n or property of a relative or member or his family or of anyone in his com- at the time of the robbery, is guilty of robbery and shall be punished as a -martial may direct.

123. Forgery.

ıy person subject to this code who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

ilty of forgery and shall be punished as a court-martial may direct.

. 124. Maiming.

ny person subject to this code who, with intent to injure, disfigure, or disable, cts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof; or

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

uilty of maiming and shall be punished as a court-martial may direct.

t. 125. Sodomy.

a) Any person subject to this code who engages in unnatural carnal copulation h another of the same or opposite sex or with an animal is guilty of sodomy. netration, however slight, is sufficient to complete the offense.

b) Any person found guilty of sodomy shall be punished as a court-martial y direct.

T. 126. Arson.

(a) Any person subject to this code who willfully and maliciously burns or sets fire a dwelling in which there is at the time a human being, or any other struc- re, water craft, or movable, wherein to the knowledge of the offender there is the time a human being, is guilty of aggravated arson and shall be punished as court-martial may direct.

(b) Any person subject to this code who willfully and maliciously burns or sets e to the property of another, except as provided in subdivision (a) of this article, guilty of simple arson and shall be punished as a court-martial may direct.

RT. 127. Extortion.

Any person subject to this code who communicates threats to another with the ntention thereby to obtain anything of value or any acquittance, advantage, or mmunity of any description is guilty of extortion and shall be punished as a ourt-martial may direct.

RT. 128. Assault.

(a) Any person subject to this code who attempts or offers with unlawful force r violence to do bodily harm to another person, whether or not the attempt or ffer is consummated, is guilty of assault and shall be punished as a court-martial ay direct.

(b) Any person subject to this code who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

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ART. 129. Burglary.

Any person subject to this code who, with intent to commit an offense punishable under articles 118 through 128, inclusive, breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

ART. 130. Housebreaking.

Any person subject to this code who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

ART. 131. Perjury.

Any person subject to this code who in a judicial proceeding or course of justice willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

ART. 132. Frauds against the Government.

Any person subject to this code—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof; or

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing such oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing the same to be forged or counterfeited; or

(3) who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

ART. 133. Conduct unbecoming an officer and gentleman.

Any officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the armed forces.

ART. 134. General article.

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this code may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.

PART XI—MISCELLANEOUS PROVISIONS

Article

135. Courts of inquiry.
136. Authority to administer oaths and to act as notary.
137. Articles to be explained.
138. Complaints of wrongs.
139. Redress of injuries to property.
140. Delegation by the President.

ART. 135. Courts of inquiry.

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated

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by the Secretary of a Department for that purpose whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry shall consist of three or more officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed by the National Military Establishment who has a direct interest in the subject of inquiry shall have the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and shall have the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but shall not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. In case the record cannot be authenticated by the president it shall be signed by a member in lieu of the president and in case the record cannot be authenticated by the counsel for the court it shall be signed by a member in lieu of the counsel.

ART. 136. Authority to administer oaths and to act as notary.

(a) The following persons on active duty in the armed forces shall have authority to administer oaths for the purposes of military administration, including military justice, and shall have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, and by other persons subject to this code outside the continental limits of the United States:

(1) All judge advocates of the Army and Air Force;

(2) All law specialists;

(3) All summary courts-martial;

(4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(5) All commanding officers of the Navy and Coast Guard;

(6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and

(7) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty in the armed forces shall have authority to administer oaths necessary in the performance of their duties:

(1) The president, law officer, trial counsel, and assistant trial counsel for all general and special courts-martial;

(2) The president and the counsel for the court of any court of inquiry;

(3) All officers designated to take a deposition;

(4) All persons detailed to conduct an investigation;

(5) All recruiting officers; and

(6) All other persons designated by regulations of the armed forces or by statute.

(c) No fee of any character shall be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, shall be prima facie evidence of his authority.

ART. 137. Articles to be explained.

Articles 2, 3, 7 through 15, 25, 27, 31, 37, 38, 55, 77 through 134, and 137 through 139 of this code shall be carefully explained to every enlisted person at the time of his entrance on active duty in any of the armed forces of the United States, or within six days thereafter. They shall be explained again after he has completed six months of active duty, and again at the time he reenlists. A complete text of the Uniform Code of Military Justice and of the regulations prescribed by the President thereunder shall be made available to any person on active duty in the armed forces of the United States, upon his request, for his personal examination.

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ART. 138. Complaints of wrongs.

Any member of the armed forces who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to any superior officer who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. That officer shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department concerned a true statement of such complaint, with the proceedings had thereon.

ART. 139. Redress of injuries to property.

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces he may, subject to such regulations as the Secretary of the Department may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three officers and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of such commanding officer directing charges herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) Where the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be deemed just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

ART. 140. Delegation by the President.

The President is authorized to delegate any authority vested in him under this code, and to provide for the subdelegation of any such authority.

SEC. 2. If any article or part thereof, as set out in section 1 of this Act, shall be held invalid, the remainder shall not be affected thereby.

SEC. 3. No inference of a legislative construction is to be drawn by reason of the part in which any article is placed nor by reason of the catch lines of the part or the article as set out in section 1 of this Act.

SEC. 4. All offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the effective date of this Act under any law embraced in or modified, changed, or repealed by this Act may be prosecuted, punished, and enforced, and action thereon may be completed, in the same manner and with the same effect as if this Act had not been passed.

SEC. 5. This Act shall become effective on the last day of the twelfth calendar month after approval of this Act, or on July 1, 1950, whichever date is later.

SEC. 6. Articles of War 107, 108, 112, 113, 119, and 120 (41 Stat. 809, 810, 811), as amended are further amended as follows:

(a) Delete from article 107, the words "Article 107."
(b) Delete from article 108, the words "Article 108."
(c) Delete from article 112, the words "Article 112."
(d) Delete from article 113, the words "Article 113."
(e) Delete from article 119, the words "Article 119."
(f) Delete from article 120, the words "Article 120."

These provisions as amended herein shall be construed to have the same force, effect, and applicability as they now have, but shall not be known as "Articles of War."

SEC. 7. (a) AUTHORITY OF NAVAL OFFICERS AFTER LOSS OF VESSEL.—When the crew of any naval vessel or aircraft are separated from their vessel or aircraft by means of its wreck, loss, or destruction, all the command and authority given to the officer of such vessel or aircraft shall remain in full force until such crew shall be regularly discharged or reassigned by competent authority.

(b) AUTHORITY OF OFFICERS OF SEPARATE ORGANIZATION OF MARINES.—When a force of marines is embarked on a naval vessel or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organizations of marines shall be the same as though such organization were serving at a naval station on shore, but nothing herein shall be construed as impairing the paramount authority of the commanding

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officer of any vessel over the vessel under his command and all persons embarked thereon.

(c) COMMANDERS' DUTIES OF EXAMPLE AND CORRECTION.—All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(d) DIVINE SERVICE.—The commanders of vessels and naval activities to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

(e) REVERENT BEHAVIOR.—All persons in the Navy are enjoined to behave themselves in a reverent and becoming manner during divine service.

OATH OF ENLISTMENT

SEC. 8. Every person who is enlisted in any armed force shall take the following oath or affirmation at the time of his enlistment: "I, ----------, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice." This oath or affirmation may be taken before any officer.

REMOVAL OF CIVIL SUITS

SEC. 9. When any civil or criminal prosecution is commenced in any court of a State of the United States against any member of the armed forces of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the armed forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed by law, and the cause shall thereupon be entered on the docket of such district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine said cause.

DISMISSAL OF OFFICERS

SEC. 10. No officer shall be dismissed from any of the armed forces except by sentence of a general court-martial, or in commutation thereof, or, in time of war, by order of the President; but the President may at any time drop from the rolls of any armed force any officer who has been absent without authority from his place of duty for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a Federal or State penitentiary or correctional institution.

SEC. 11. The proviso of section 3 of the Act of April 9, 1906 (34 Stat. 104, ch. 1370), is amended to read as follows:

"*Provided*, That such midshipman shall not be confined in a military or naval prison or elsewhere with men who have been convicted of crimes or misdemeanors; and such finding and sentence shall be subject to review in the manner prescribed for general court-martial cases."

SEC. 12. The following sections or parts thereof of the Revised Statutes or Statutes at Large are hereby repealed. Any rights or liabilities existing under such sections or parts thereof prior to the effective date of this Act shall not be affected by this repeal, and this Act shall not be effective to authorize trial or punishment for any offense if such trial or punishment is barred by the provisions of existing law:

(a) Chapter II of the Act of June 4, 1920 (41 Stat. 759, 787-811, ch. 227), as amended, except Articles of War 107, 108, 112, 113, 119, and 120;

(b) Revised Statutes 1228 through 1230;

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(c) Act of January 19, 1911 (36 Stat. 894, ch. 22);
(d) Paragraph 2 of section 2 of the Act of March 4, 1915 (38 Stat. 1062, 1084, ch. 143);
(e) Revised Statutes 1441, 1621, and 1624, articles 1 through 14 and 16 through 63, as amended;
(f) The provision of section 1457, Revised Statutes, which subjects officers retired from active service to the rules and articles for the government of the Navy and to trial by general court-martial;
(g) Section 2 of the Act of June 22, 1874 (18 Stat. 191, 192, ch. 392);
(h) The provision of the Act of March 3, 1893 (27 Stat. 715, 716, ch. 212), under the heading "Pay, Miscellaneous," relating to the punishment for fraudulent enlistment and receipt of any pay or allowances thereunder;
(i) Act of January 25, 1895 (28 Stat. 639, ch. 45), as amended;
(j) Provisions contained in the Act of March 2, 1895 (28 Stat. 825, 838, ch. 186), as amended, under the heading "Naval Academy," relating to the power of the Secretary of the Navy to convene general courts-martial for the trial of naval cadets (title changed to "midshipmen" by Act of July 1, 1902, 32 Stat. 662, 686, ch. 1368), his power to approve proceedings and execute sentences of such courts-martial, and the exceptional provision relating to approval, confirmation, and carrying into effect of sentences of suspension and dismissal;
(k) Sections 1 through 12 and 15 through 17 of the Act of February 16, 1909 (35 Stat. 621, 623, ch. 131);
(l) The provision of the Act of August 29, 1916 (39 Stat. 556, 573, ch. 417), under the heading "Hospital Corps", making officers and enlisted men of the Medical Department of the Navy who are serving with a body of marines detached for service with the Army subject to the rules and Articles of War while so serving;
(m) The provisions in the Act of August 29, 1916 (39 Stat. 556, 586, ch. 417), under the heading "Administration of Justice";
(n) Act of October 6, 1917 (40 Stat. 393, ch. 93);
(o) Act of April 2, 1918 (40 Stat. 501, ch. 39);
(p) Act of April 25, 1935 (49 Stat. 161, ch. 81);
(q) The third proviso of section 6, title I, of the Naval Reserve Act of 1938 (52 Stat. 1175, 1176, ch. 690);
(r) Section 301, title III, of the Naval Reserve Act of 1938 (52 Stat. 1175, 1180, ch. 690);
(s) Act of March 22, 1943 (57 Stat. 41, ch. 18);
(t) Act of April 9, 1943 (57 Stat. 58, ch. 36);
(u) Sections 2, 3, 4, 6 and 7 of the Act of May 26, 1906 (34 Stat. 200, 201, ch. 2556);
(v) The provision of the Act of June 5, 1920 (41 Stat. 874, 880, ch. 235), under the heading "Coast Guard", authorizing the trial of enlisted men in the Coast Guard by deck courts.

Mr. BROOKS. It has been suggested, and I think appropriately, that when Secretary Forrestal finishes his statement we not attempt to burden him with technical questions. If there are any questions of policy, I am sure he will be glad to answer them, but technical questions we ought to reserve for later.

Mr. Forrestal, you have your statement and the committee will be glad to hear it.

STATEMENT OF SECRETARY OF DEFENSE JAMES FORRESTAL

Secretary FORRESTAL. Mr. Chairman, if it is not inappropriate and if I may be permitted to digress for a moment from the substance of this statement, may I say that I would like to join this committee in their expression of profound regret at the death of your former chairman, who was a great patriot, an intelligent and well-informed legislator, a great friend of the armed services, and a very loyal and devoted friend to all of us. If that is not inappropriate, I would like to have your permission to have that inserted in the record.

Mr. BROOKS. It is certainly appropriate, Secretary Forrestal.

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Secretary FORRESTAL. And my sympathy to his family, in respect of his memory.

Mr. VINSON. Mr. Chairman, I suggest that when the House meets this morning that as many of the Members who possibly can be on the floor to pay tribute to our former distinguished chairman.

Secretary FORRESTAL. Mr. Chairman, in various recent statements and in my report to the President and the Congress covering the first 15 months of the existence of the National Military Establishment, I have described the more important steps that have been undertaken and the accomplishments which have been achieved.

From the outset, the unification of the court-martial procedures of the Army, Navy, and Air Force has had a high priority in the National Military Establishment because it is a field in which unification is logical and particularly desirable.

We have discovered, in studying many of the fields in which the Military Establishment operates, that unification requires careful, painstaking study. Major problems of complexity cannot be solved and unification achieved at the stroke of a pen. Unifying the Army and Navy court-martial procedures was no exception. It required concentrated hard work and was a most difficult job.

As you know, the Articles of War and the Articles for the Government of the Navy stem from laws adopted early in the history of this country. From the beginning, the articles were marked by basic differences and their growth over the years reflected the varying customs of the services.

As a result, the special committee which undertook to draft the Uniform Code of Military Justice early last summer found differences in nomenclature, organization, function and procedure between the Articles of War and Articles for the Government of the Navy.

While I am far from being an expert in the field—having no legal background—I must admit that when the project started I was sure that the committee would find a considerable number of areas which were not susceptible to uniform treatment.

It is extremely gratifying that the committee reduced those areas to the vanishing point, and we now have submitted to you a proposed code which can be uniformly applicable to all the armed forces in time of peace and war.

Another problem faced by the committee was to devise a code which would insure the maximum amount of justice within the framework of a military organization. We are all aware of the number of criticisms which have been levelled against the court-martial system over the years.

I do not believe it is as bad as it has been painted, nor as good as some of its defenders claim. Many of the criticisms have seemed to me to be without foundation, but many of them have seemed to me to be justified.

The point of proper accommodation between the meting out of justice and the performance of military operations—which involved not only the fighting, but also the winning of wars—is one which no one has discovered.

I do not know of any expert on the subject—military or civilian—who can be said to have the perfect solution. Suffice it to say, we are striving for maximum military performance and maximum justice. I believe the proposed code is the nearest approach to those ideals.

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Great credit is, therefore, due to the Army, the Navy, and the Air Force and the members of the committee who represented then Assistant Secretary Gordon Gray of the Army, Under Secretary John Kenney of the Navy, and Assistant Secretary Eugene Zuckert of the Air Force.

Prof. Edmund M. Morgan, of the Harvard University Law School, acted as chairman, and under his leadership a remarkable degree of unanimity was achieved within the committee. I say "remarkable" because, in view of the kind and number of problems before them, they are divided on only three issues. These issues were submitted to me and the proposed code incorporates my decisions on them. Two other provisions have been incorporated at the request of the Bureau of the Budget.

A project of this kind of necessity represents the combined views of a number of people, and each and every participant partially compromised his views on a number of points. Therefore, the proposed code is not the product of one person, nor would it have all its present provisions if written by one person or by one department.

The Army, the Navy, the Air Force, the Coast Guard, Professor Morgan and I each support the many individual provisions with varying shades of enthusiasm, but the committee agreed on all points, except to the extent I have mentioned.

For this reason, I think the proposed code should be analyzed as an integrated whole. On that basis, it is my opinion that the code as set forth in H. R. 2498 is well-designed to protect the rights of those subject to it and to afford more equal and uniform justice to the members of all the armed forces.

I believe it does not interfere with appropriate military functions. Since it has these characteristics, I strongly urge your favorable consideration.

As you know, I am not a lawyer and so will not attempt to explain to you the details of the proposed code. Professor Morgan has agreed to take up that burden on my behalf, and Mr. Felix Larkin of my staff can supply you with the technical information you may need.

If you desire testimony from the members of the committee, from the Judge Advocate General, or from anyone else in the National Military Establishment, they are available at your call.

Without taking more of your time, I would like to conclude my remarks and introduce Professor Morgan who, as I have said, was the extremely able chairman of the committee which drafted the proposed code.

Mr. BROOKS. Thank you very much, Secretary Forrestal. We appreciate your very fine statement.

Now, if there are no questions on matters of broad comprehensive policy of the Secretary, the committee will call Dr. Edmund M. Morgan, Jr., of the Harvard Law School and also chairman of the committee which framed this proposed legislation.

Dr. Morgan, the committee is very happy to have you appear here.

And, Mr. Secretary, we appreciate your coming down here and thank you most kindly.

Dr. MORGAN. Thank you, sir.

Mr. RIVERS. Mr. Chairman, may I suggest that Mr. Secretary Forrestal may have pressing business and that he be excused, unless he desires to stay.

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Mr. BROOKS. Mr. Secretary, you may remain if you care to, but if you have pressing business, it will be all right for you to leave.

Secretary FORRESTAL. I will appreciate the courtesy of the committee if they will excuse me.

Mr. BROOKS. Thank you, Mr. Secretary.

Dr. Morgan?

Dr. MORGAN. Yes, sir.

Mr. BROOKS. Doctor, before you begin your statement, could I ask you about how long you have been working on this measure?

Dr. MORGAN. Yes, sir. The working group began some time in June and I began some time in August. We have just completed it—just a couple of weeks ago. We had very numerous meetings of the committee from August on, and the work group under Mr. Larkin met a great number of times while the committee was not in session.

The sessions of the committee would last from a day to 2 days.

Mr. BROOKS. Thank you.

Mr. SHORT. Mr. Chairman, before he begins, I beg to be excused because I have to appear before a subcommittee of appropriations in about 10 or 15 minutes.

Mr. BROOKS. All right.

Mr. VINSON. Mr. Chairman, before we start——

Mr. BROOKS. Mr. Vinson.

Mr. VINSON. While our colleague from Ohio, Mr. Elston, who is a very able lawyer, is not a member of the subcommittee, I do hope that Mr. Elston will try to sit in on all the meetings of the subcommittee when this bill is being presented. I would appreciate it as a personal favor if you will give the committee the benefit of your profound legal knowledge and sit in with the committee.

Mr. ELSTON. Thank you, Mr. Chairman. I will be glad to do so.

Mr. VINSON. And during the last Congress you were chairman of the legal subcommittee. And I hope you will be able to attend each one of these meetings and contribute to the country your valuable assistance with reference to the preparation of a measure of this character.

Mr. ELSTON. Thank you, Mr. Chairman. I will be glad to do it whenever I possibly can.

Mr. BROOKS. Mr. Chairman, we did an able job, too, on that bill.

Doctor, will you proceed.

STATEMENT OF PROF. EDMUND M. MORGAN, JR., HARVARD UNIVERSITY LAW SCHOOL

Dr. MORGAN. First I better thank you for the degree which you just conferred upon me.

For this opportunity to appear before you in support of H. R. 2498, I thank you personally and in behalf of the committee which drafted it at the request of Secretary Forrestal. In the hope of putting before you in the shortest time the essential features of the code, I have prepared a statement, which I regret to say is rather long, but which I find impossible to shorten since the bill covers the entire field of military justice. With your permission I shall read it.

H. R. 2498 is the result of an intensive study of the present systems and practices of the several departments or branches of the military forces, of the complaints that have been made against both the

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structure and operation of the existing military tribunals, of the explanations and answers of the services to those complaints, of the various suggestions that have been made for modification or reform and of the arguments of representatives of the services as to the practicability of each proposal.

In some instances we found helpful, information concerning the practices of foreign military establishments. Copies of data compiled by the staff of the committee under the direction of Mr. Larkin, assistant general counsel, Secretary of Defense, have been supplied for your use.

You will see them here. Here is a copy of it. So you can see there was really a lot of work done, even though you may conclude that it did not do very much good to some of our intellects. But certainly all the data here were compiled here and summarized, you see.

Our directive, which we endeavored to obey, was to create a code that would be applicable to all the armed forces—Army, Navy, Air Force, and Coast Guard; a code that would operate uniformly for the unified Military Establishment.

We have also tried to phrase the code in modern legislative language and to arrange its provisions in orderly sequence, so that it would be understandable to laymen and to civilian lawyers as well as to men learned in military law.

The code is designed to supersede (*a*) the Articles of War including the amendments contained in the Selective Service Act of 1948, (*b*) the Articles for the Government of the Navy, and (*c*) the Disciplinary Laws of the Coast Guard. As you know, there are at present no separate articles governing the Air Force or the Marine Corps.

If passed, the code will be the sole statutory authority embodying both the substantive and the procedural law governing military justice and its administration. There will be the same law and the same procedure governing all personnel in the armed services.

That this should be so is the settled conviction of most people and I believe no argument is necessary to demonstrate its validity.

In the same way that all persons in this country are subject to the same Federal laws and triable by the same procedure in all Federal courts, so it will be in the armed forces.

The original trial of an accused will be in a court of his own service, except in certain circumstances where he is a member of a force acting jointly with another. The departmental review will follow a similar course.

But the procedure before trial, at the trial, and on review will be the same as if the case had occurred in either of the other armed forces. The final review on the law will be made by the same tribunal for all the Departments of the Military Establishment.

The objective is to make certain not only that justice can be done to the accused but that there be no disparities between the services. A civilian lawyer will have no difficulty in conducting any case at any stage of the proceeding.

You will doubtless consider each of the 140 articles contained in the code and compare it, by cross-reference, with the corresponding provision in the Articles of War and the Articles for the Government of the Navy which it supplants.

Inasmuch as a large portion of the code has its foundation in those two statutes, in many instances there is very little that is new in the

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uniform code except the language. There are a number of provisions, however, which were not heretofore contained in either the Articles of War or the Articles for the Government of the Navy and to which you will probably wish to give special consideration.

By a brief summary of the contents of each part of the uniform code, starting at the beginning, I can indicate to you I think those articles which are incorporations of present provisions and practices, those which are incorporations of the amendment of last year to the Articles of War, and those articles which are new.

Part I of the code concerns itself with general provisions which are usually found in modern penal laws. This part contains, in addition to definitions, the general jurisdictional provisions of military law. There is little in this part which is entirely new.

Article 4, however, is a noteworthy change for the Army and Air Force in that it provides that, in cases where an officer is dismissed by the President without trial and in the event he is later exonerated, he may be restored to active duty.

Article 6 extends to the Navy the provisions passed by the Congress at the last session requiring assignments for duty of judge advocates and legal officers to be subject to the approval of the appropriate Judge Advocate General and requiring consultation by convening authorities with staff judge advocates or legal officers in matters relating to the administration of military justice.

Part II, which consists of articles 7 through 14, covers the general subject of apprehension and restraint. It is new only to the extent that the conflicting definitions of the terms used and the different processes have been simplified and made more orderly.

Attention is drawn, specifically, to article 12, which continues the provision enacted by the Eightieth Congress in connection with confinement of members of the armed forces with enemy prisoners and enemy nationals.

Part III consists of one article only—article 15—which deals with nonjudicial punishment imposable by commanding officers. This is commonly called company punishment in the Army, and punishment at mast in the Navy.

As you will notice, the article lists all the punishments now so imposable by both the Army and the Navy. The present practice of the Army differs from that of the Navy. The permitted punishments are different.

The Army practice has been to impose less severe punishment and to give the accused an option to demand trial by court martial. The Navy has imposed somewhat more severe penalties and has given the accused no option.

This diversity in practice is due to two factors: (1) men on shipboard are necessarily in a different situation with reference to freedom of motion and availability of replacement than men in camp; (2) the punishment is imposed at mast by the captain, and a summary court consists of an inferior officer, while in the Army such an incongruity in rank between a commanding officer and a summary court would be virtually unknown.

The committee concluded that these factors justified a difference in treatment. Consequently article 15, first, subjects the imposition of these nonjudicial penalties to complete regulation by the President, and, second, gives the Secretary of each Department discretionary

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power to put additional limitations upon them and to provide for an option to the accused to demand a court martial.

One further provision of interest in this article is subdivision (d) which strengthens the present system of appeals from nonjudicial punishment and permits reviewing authorities not only to remit the unexecuted portion of punishment, but to restore rights adversely affected.

Part IV in its article 16 creates three classes of courts martial—general, special, and summary. These correspond to the present courts in the Army. The special court martial under present Navy practice is called a summary court, and the summary court is called a deck court.

The chief difference from the present Army provision is the requirement that a general court shall consist of at least five members and a law officer.

Most of the articles consist of a rewording and revision of provisions found at present in both the Articles of War and the Articles for the Government of the Navy. Article 17, however, is new in that it provides reciprocal jurisdiction of courts martial.

By its terms, each armed force shall have court-martial jurisdiction over all persons subject to the Uniform Code. There is thus provided authority for an Army court martial to try either its own personnel or the personnel of the Navy, the Air Force, or the Coast Guard.

It is felt that this provision is necessary in the light of unification and by virtue of the tendency to have military operations undertaken by joint forces. Inasmuch as it is not possible at this time to forecast the different forms of joint operation which will take place in the future, the exercise of the reciprocal jurisdiction of one armed force over the personnel of other services has been left to the regulations of the President.

In this way a desirable flexibility is attained which will enable the President to prescribe the types of operations in which reciprocal jurisdiction will be exercised.

You gentlemen are probably aware that at the present time the Military Air Transport Service is already practically a permanent joint operation, with an Air general in charge and an admiral next in command, so that there is already one joint operation.

Part V, which has to do with the appointment and composition of courts martial, includes articles 22 through 29. These fix the qualifications of the persons who may convene general, special, and summary courts and the persons who may serve on courts martial.

Article 25 provides for the service of enlisted men on courts which try enlisted men and follows the provision of Public Law 759 of the Eightieth Congress. Articles 26 and 27 deserve special mention. The former, which provides for a law officer on general courts martial, changes the practice of the Navy which has heretofore had no judge on its courts.

It also changes the practice of the Army, which has had a law member, in that this official will now act solely as a judge and not as a member of the court, which becomes much like a civilian jury. The law officer will not retire with the court.

Article 27, which provides for the appointment of trial counsel and defense counsel, changes present Army and Navy law in that it makes it mandatory for each counsel before a general court martial to be

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either a judge advocate or a law specialist, or a person admitted to practice in the Federal or the highest court of a State, and to be certified by the Judge Advocate General as competent.

Heretofore, lawyers acted as counsel only if they were found available by the convening authority.

And as you probably know, gentlemen, the decision of the commanding general as to whether they were available was held to be final.

The committee believes that the provisions of these two articles will tend to make the general court martial a more independent tribunal staffed by competent and efficient lawyers.

Part VI covers the provisions governing pretrial procedure and, in the main, the articles in this part follow present Army practice as prescribed in the amendment of 1948. The Navy practice of pretrial investigation is less formal than that of the Army. By the new provisions, both of them will be the same.

Part VII, articles 36–54, covers trial procedure and follows closely the present Army and Navy practices. A good many of the provisions, however, now make uniform a number of minor differences which have heretofore existed.

Article 37 continues the provision passed by the Congress last year prohibiting unlawful influence on the actions of courts martial. The committee believed it most desirable to continue this salutary prohibition, which will do much to eliminate so-called command control.

Article 41, which provides one preemptory challenge of members of general and special courts, follows present Army practice, but changes Navy practice, which heretofore had no provision for preemptory challenges.

Another example of uniformity is found in article 51, which covers the question of voting and rulings. As set out by the provisions of the article, the law officer now becomes more nearly an impartial judge in the manner of civilian courts.

In addition to ruling on interlocutory questions of law during the course of the trial, the law officer is now required to instruct the court, on the record, before it retires as to the elements of the offense and to charge the court on presumption of innocence, reasonable doubt and burden of proof.

In article 52, you will notice that the number of votes required for both conviction and sentence have been made uniform for all the services.

Part VIII, articles 55–58, deals with sentences and has nothing new in it except an authorization to the respective Secretaries to make regulations for carrying into execution any sentence of confinement in any correctional or penal institution under the control of the United States.

This was drafted after consultation with the correctional branches of the services and its purpose is to make available more adequate facilities for rehabilitation of offenders.

Part IX, articles 59–76, provides for the appellate review of court-martial cases. It makes a number of innovations in which I am sure you will be interested. When the committee considered the whole subject of appellate review, it found that the present procedures of the Army and Navy differed widely.

The Army system is exceedingly complex. To the review by the convening authority and the board of review, further review was

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added last year by Congress by a Judicial Council composed of three general officers.

The course of review for several types of case is painstakingly spelled out in the Articles of War by reference to and in conjunction with the respective functions of approving and confirming authorities, and is difficult for the uninitiated to diagram or understand.

In studying this system, the Navy felt that it was wholly impracticable for its operations. The Navy system of review, on the other hand, is far more informal and, in the main, rests ultimately with the Secretary of the Navy.

It provides a review by the convening authority, a review in the Office of the Judge Advocate General, and an additional review on sentence by the Bureau of Presonnel and by a sentence review board. The action of all these agencies, however, is advisory only.

The Army thought this system unsuited to its needs. The committee felt obliged to devise a system that would be useful and practical for all services, and would be consonant with the plan of unification.

In essence, the appellate review proposed in the Uniform Code is as follows: There is an initial review by the convening authority covering law, facts, credibility of witnesses and a review of the sentence.

In this respect, it is in all essentials the same as the first review provided at the present time by both the Army and the Navy. Insofar as the convening authority has affirmed a finding or sentence against the accused, a review is provided by a board of review in the Office of the Judge Advocate General of the Department of which accused is a member.

This board of review is a counterpart of the present board of review of the Army. As the amendment of 1948 provides, it reviews the records of the trial for law, facts, and sentence. To this extent, the Navy system is changed.

Following this review, there is a review for errors of law by a single Judicial Council, composed of three civilians. It is apparent that such a tribunal is necessary to insure uniformity of interpretation and administration throughout the armed services.

Moreover, it is consistent with the principle of civilian control of the armed forces that a court of final appeal on the law should be composed of civilians. With your permission I will now stop to to spell out further the many details of this system.

I should prefer to postpone further explanation of it until you take it up formally and in detail. At this time, we can show you some charts of this system and its comparison to the present Army and Navy systems. They will, I think, help you to visualize the whole problem.

Personally, I think I can explain it better without a chart than I can with a chart. I suppose that is because I am no statistician, because whenever you try to plot a curve or make a chart I begin to get confused.

I think I can explain it in language that at any rate a lawyer will understand.

Part IX also provides in article 70 for appellate counsel to assure that the parties will be adequately represented before the boards of review and the Judicial Council. They shall be appointed by the Judge Advocates General with provision for the accused to have his own counsel.

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Article 72 provides for hearing before the suspension of a serious sentence can be vacated. Both of these articles are new.

Part X covers punitive articles. In the main, the present punitive articles of the Articles of War and the Articles for the Government of the Navy are retained. There are, however, several interesting features of the present punitive articles.

In the first place, we have set forth some general provisions normally found in modern penal laws and not heretofore contained in the Articles of War or the Articles for the Government of the Navy.

These cover the definitions of a "principal," "an accessory after the fact," "attempts to commit crimes," "conspiracies," and "solicitations."

You will notice as you study the punitive articles that we have consolidated a number of them in the same fashion as we have consolidated a number of other provisions throughout the rest of the code.

An example of this is the crime of desertion, which is now contained in article 85. The same material was heretofore found in Articles of War 28 and 58 and in Articles for the Government of the Navy 10, 4 (par. 6), and 8 (par. 21).

In addition, we have made specific several offenses which were previously punishable under the general article. One of them we designate as "missing movement," which is contained in article 87.

This is an aggravated type of absence without leave and is designed to meet conditions encountered in World War II. The experience of World War II indicates that a large number of military personnel who were legitimately on leave or who left without permission returned after their unit or ship had moved or sailed.

This misconduct caused so much trouble that it was felt necessary to make it a subject of a specific article. Article 105, entitled "Misconduct as Prisoner," is also new and provides for punishment of anyone subject to the code, who while in the hands of the enemy in time of war, either for the purpose of securing favorable treatment for himself or while in a position of authority, mistreats others who are confined with him.

You will recall that a number of instances of this type came to light after the war. They justify the enactment of this specific offense.

The last part, namely part XI, contains a number of miscellaneous articles such as those regulating the procedures before courts of inquiry, those providing for authority to administer oaths, and for complaints against superiors, and for redress for damage done to private property by members of the armed forces.

One important concern of the committee throughout its deliberations was the position of military command in the court-martial system. Secretary Forrestal, in his precept to the committee, instructed us to draft a uniform code, to be uniform in substance and uniform in interpretation and construction, which would protect the rights of persons subject to the code without undue interference with appropriate military functions.

It was recognized from the beginning by the committee that a system of military justice which was only an instrumentality of the commander was as abhorrent as a system administered entirely by a civilian criminal court was impractical.

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We had before us, as I have told you, studies made by various committees in the past and also the testimony presented to this committee in the last Congress. We were aware of the criticisms which had been made against the court-martial system and the defenses that have been put forward in its behalf.

We were convinced that a Code of Military Justice cannot ignore the military circumstances under which it must operate but we were equally determined that it must be designated to administer justice.

We, therefore, aimed at providing functions for command and appropriate procedures for the administration of justice. We have done our best to strike a fair balance, and believe that we have given appropriate recognition of each factor.

Because of the military nature of courts martial, we have left the convening of the courts, the reference of the charges, and the appointment of members to the commander. For the same reason, we have preserved the initial review of the findings and the sentence by the commander.

Having done this, we examined ways and means of restricting the commander to his legitimate functions. We have tried to prevent courts martial from being an instrumentality and agency to express the will of the commander.

To make the action of courts martial and the procedure for review free from his influence we have set up an impartial judge for the court martial, made it mandatory that lawyers represent the parties in the general court-martial cases, required the commander to consult before and after trial with his staff judge advocate or law specialist, and prohibited him from either censuring or reprimnading the court.

We have set up a system which resembles the independent civilian court, but we have placed it within the framework of military operations. At the trial and in the review of facts the men who function as counsel, trial judge, and intermediate appellate judges will be skilled in law and in military matters. They will be independent of command and subject to a supreme civilian tribunal on questions of law.

I am aware that there are many schools of thought on military justice, ranging all the way from those who sponsor complete military control, to those who support a complete absence of military participation. I do not believe either of these extremes represents the proper solution.

In closing my formal remarks, I would like to state again—for what it is worth—that I strongly support the uniform code and urge its approval by the Congress. As Secretary Forrestal told you, there was a remarkable unanimity among the members of the committee.

The code as submitted is not exactly what any one of us would have drawn had he been alone and starting without precedent. Many of the provisions on which there was unanimity were compromises. I support all these unanimous decisions, and I also support the decisions made by Secretary Forrestal.

I should be glad to try to answer any questions.

Mr. BROOKS. Thank you very much, Professor Morgan.

Now I would like to call on the Chairman of our full committee to present the questions he has.

Mr. VINSON. I suggest that we go around the room and let the other members finish first.

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Of course, I want to take this opportunity of expressing my gratification at the work that the committee has done to bring about a uniform code of procedure and practice in the armed services. I think it is a step that should have been taken years and years ago.

And your committee is to be commended for the outstanding service that you have rendered in enabling us to have a basis to enact the law. I want to thank you very much, Dr. Morgan, for the valuable services you have rendered and the aid you have given to the committee.

Dr. MORGAN. I thank you very much, Mr. Chairman.

Mr. BROOKS. Thank you very much, Mr. Vinson.

I would like to ask you if I may put three questions, and then I would like to turn the questioning entirely over to the committee.

The first one is the reason for the new procedure governing the law member. You touched upon that, but you did not give the behind-the-curtain reasons why the change was made.

Dr. MORGAN. Well, the fundamental notion was that the law officer ought to be as near like a civilian judge as it was possible under the circumstances.

I may say to you that the report of the English committee—which I have discovered since we drew this code—makes exactly the same kind of provision: Heretofore the English had the same—and I suppose they do still, until this recommendation is followed—system that the Army has had with the law member, having the law member rule on interlocutory questions and then charge the court and go out with it and act practically as a member.

They have now recommended—this committee which made a very careful study of the English system—that the law member now act in the same way as the civilian judge and that he do nothing without them.

Their notion was that after he has once done what a civilian judge would do he ought not to then go back and try to influence them on the facts. And we felt the same way. We felt that whatever influence that judge exercised should be on the record.

The charge which he gives them will be on the record—everything that he gives in open court will be on the record. When they go back to deliberate they are like a jury and there is no particular record with reference to that.

The law member, when he retires with the court, may make any kind of statement to them. And it has been stated—I would not say on how good authority—that frequently when he went back there why he said, "Of course the law is this way but you fellows don't have to follow it."

A judge, as you know, in the civilian court, except in a very few States, tells the jury that they have to follow the law as laid down and particularly the law which is in favor of the accused.

Your question was directed, I take it, Mr. Chairman, to the reason why we departed from the Army system.

Mr. BROOKS. Yes. My question was framed for the purpose of opening up that avenue of thought.

Dr. MORGAN. I see.

The Navy has no law officer. And of course the Army law officer now has to be a lawyer. Previously, that is previous to Congressman

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Elston's bill, there was no requirement that the law officer should be law-trained.

And I think the 1948 amendment required that he should be law-trained. But he still could go back with the court.

Now the law officer may become sort of a professional juryman, if they kept reappointing the same person, and as you probably know the professional jurymen are the convicting jurymen usually.

If you kept getting the same jurymen all the time the number of convictions is very, very much greater than if you get a new jury.

Mr. BROOKS. Professor, the second question that I wanted to suggest to you is the reasoning behind the changes in reference to command influence. You covered that in the last part of your statement, but you did not give us the reasons why that was necessary—to make the changes.

Dr. MORGAN. In the first place, until the Elston bill that was passed last year, there was no statutory provision preventing command influence. As you probably remember, during the First World War the commanding officer could send the case back for reconsideration of an acquital.

And you probably remember also that when he cut down the sentence or when he ordered the whole thing set aside he reprimanded the court. Also during and after World War II there were a great many complaints.

For instance, Governor Gibson, of Vermont, was very wroth at the treatment that he had received as a member of a court martial, being called in by the commanding officer and reprimanded. And when Mr. Gibson told him that he was a lawyer and that they could not tell him how to decide cases, that the choice was to get him off the court or let him use his conscience on the case, they got him off the court.

So we were sure that you had to have some control over the command. And Mr. Elston's provision specifically forebade any of these so-called skin letters or any censure, of the court for any of its actions. And we continued that.

It has been suggested that that is not sufficient, that that does not of itself prevent it. So we have also made the exercise of improper influence an offense.

We think also that we have lessened the command influence by making for all the services the provision which was in the 1948 bill as to the extent of review by the Judge Advocate General's Office; namely, that they can review for law, fact, and sentence, so that they need approve only so much of it as they think entirely justified.

Now the board of review in the Judge Advocate General's Office will be far away from the scene of the commanding officer who convened the court. Before that 1948 act the Judge Advocate General's Office could act only on questions of law and not on questions of fact.

Now they can act on the facts. We think that a means of lessening command influence. And when it is a question of law, the case then—in the severe cases—will go to the Judicial Council, which will be a civilian court and, of course, entirely outside the influence of any officer.

Is that what you had in mind?

Mr. BROOKS. Yes; that is exactly what I had in mind.

The last question I wanted to present to you is the Judicial Council. Would you mind elaborating on that some?

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Dr. MORGAN. Yes.

Mr. KILDAY. Would you mind telling us the section of the bill that covers it?

Mr. SMART. Sixty-seven.

Dr. MORGAN. Well, we provide for a review by this civilian authority.

First, of course, we have the Judicial Council set up in the Military Establishment. The members of the council must be civilians and they are appointed by the President. Their qualifications are set out there.

They have to be admitted to practice before the Supreme Court of the United States. They are really a military court of last resort.

Mr. RIVERS. These are the three civilians you are talking about?

Dr. MORGAN. Yes; that is right. We have called it a Judicial Council, using the language of the Elston bill. It is really a supreme judicial military court and it is composed entirely of civilians.

It must have at least three members. It may be that the number would have to be greater if the work proved to be too heavy for three members.

They review questions of law only. In the cases of death, where there is a death sentence, or where the sentence affects a general officer, an automatic review is provided. In cases where the penalty is as much as a year's imprisonment, then you have the equivalent of certiorari, in the civilian courts.

Before this Judicial Council and before the board of review, there is provision for appellate counsel to be appointed by the Judge Advocate General. They will represent the Government and the defendant.

They are to be trained lawyers, of course. So the accused will be represented on appeal.

We limit the civilian court to the review of questions of law. And I may say here, again, that the recommendation of the English committee—and we had no copy of their report until recently—is to the same effect.

Of course, the English committee had recommended no intermediate review at all, that is no automatic review of any courts-martial proceeding, but has recommended an appeal to a judicial body and that judicial body is composed of the person who used to be practically the Judge Advocate General and his assistants.

That judicial body consists entirely of civilians. The accused may appeal to that body on questions of law. So that committee has reached almost the same kind of conclusion that we have reached. That was composed of three civilians and two military personnel.

Mr. DURHAM. Who passes on the question of law?

Dr. MORGAN. Why the judicial council would. That is, the court of last resort would determine whether it was a question of law or a question of fact. And as you probably know, Congressman, it is a question of law whether there was any evidence upon which the tryer of fact could reasonably find a defendant, as in the civilian court.

Under our system, they would not pass on the weight of the evidence in the sense that they could set aside a finding because they thought it was against the weight of the evidence. They could set aside a finding of guilty only in case there was no evidence——

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Mr. DURHAM. Then they would pass on the question of law after the appeal was brought up to them, is that right?

Dr. MORGAN. That is right. They would pass on questions of law just the way the civilian court does.

Mr. DURHAM. And every individual would have the right to appeal to this judicial body, is that right, on every conviction if you wanted to carry it that far?

Dr. MORGAN. Not everybody. First, if the sentence is greater than a year's imprisonment and if the board of review affirms that, then the accused may petition to have it reviewed.

Aud if the petition is like a certiorari petition, he has to show that there are reasonable grounds for belief that there has been an error of law committed which would be likely to prejudice him.

Mr. KILDAY. Mr. Chairman.

Mr. BROOKS. Mr. Kilday.

Mr. KILDAY. Professor, I was on the Elston subcommittee but I am not on this one, so I want to ask you some questions.

Dr. MORGAN. Yes.

Mr. KILDAY. On this provision.

Dr. MORGAN. Yes.

Mr. KILDAY. I notice that you provide for the establishment of a Judicial Council to consist of not less than three.

Dr. MORGAN. Yes.

Mr. KILDAY. Civilians.

Dr. MORGAN. That is right.

Mr. KILDAY. What would your recommendation be on it?

Dr. MORGAN. Well, I will have to tell you that this is one of the provisions that Secretary Forrestal changed at the request of the Bureau of the Budget. You see he said that in his statement.

Mr. KILDAY. Yes.

Dr. MORGAN. It was left doubtful with us. We provided for the appointment of civilians. And we felt that Congress would have to determine the term: Whether or not they should go out with the administration, and so forth.

Mr. KILDAY. I think as good legislative practice we would more clearly have to define this office.

Dr. MORGAN. Yes.

I think the opinion of the committee would have been, because we canvassed this—and certainly it is my opinion—that these men should be appointed in exactly the same way that the circuit court of appeals judges are appointed.

Mr. KILDAY. During good behavior?

Dr. MORGAN. During good behavior, by the President, with the consent of the Senate.

Mr. KILDAY. Now, I notice that you continue the existing system with reference to the review of any case involving dismissal or dishonorable discharge.

Dr. MORGAN. Yes.

Mr. KILDAY. They must automatically go to the board of review?

Dr. MORGAN. Yes, sir.

Mr. KILDAY. But that is not true of the Judicial Council?

Dr. MORGAN. No, no, except the petition.

Mr. KILDAY. The committee specifically considered whether it should be automatically sent to the board of review?

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Dr. MORGAN. Yes, we did.

Mr. KILDAY. Now, we had a great deal of trouble with this sort of thing in the last war, you know, under, I think it is article of war 50½, where any judgment of dismissal from the service or dishonorable discharge automatically went to the board of review.

Dr. MORGAN. That is right.

Mr. KILDAY. But if the commanding officer suspended that portion of the sentence as to dismissal or dishonorable discharge until he had completed his sentence, it did not go to the board of review.

Dr. MORGAN. Right.

Mr. KILDAY. So we found in many instances the discharge was suspended and became final without review and then the suspension was lifted and it was carried out. By this device the review was voided.

Dr. MORGAN. We plugged that hole. Whether the sentence of dismissal or discharge is suspended or not, the case has to go to the board of review.

Mr. KILDAY. Now, we had done that as to the Army in our bill last year.

Dr. MORGAN. Yes.

Mr. KILDAY. And you continue that as to all of the services here?

Dr. MORGAN. That is for all the services now, yes, sir.

Mr. KILDAY. Of course, another thing we had in mind there is when you are trying an enlisted man who is probably pretty well broken in spirit and without much advice, and so on, he is likely to waive those rights. That is the reason we wanted it to be automatic. You do not think that that is true when you get as high as the Judicial Council?

Dr. MORGAN. We provide that the counsel for the defense may send a brief to the board of review if he thinks it appropriate. We did not make it mandatory for fear the board of review would be influenced by the fact that he had not seen particular errors and thought they were not inportant in case defense counsel did not write a brief.

So if counsel for the defense thinks there are errors that the board of review ought specifically to handle he can send a brief up on it, you see. And then before the board of review the soldier can demand that appellate defense counsel be there, in the Judge Advocate General's Office, and appear for him.

And I suppose it would be on the advice of the defense counsel whether he would want to appeal to the Judicial Council, because they would cover only questions of law.

Mr. KILDAY. Now, you all agree that it should be only questions of law?

Dr. MORGAN. Yes, because we thought it would hardly do to have the Judicial Council do more than a court of criminal appeals ordinarily does.

Mr. KILDAY. Well, in my State they review the facts, too.

Dr. MORGAN. They do in England, but they do not in most States, sir.

Mr. KILDAY. That would limit it, then, to a finding that there was no evidence, practically, is that right?

Dr. MORGAN. Yes.

Mr. KILDAY. That would be a question of law, that there is no evidence to support the judgment.

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Dr. MORGAN. That is right.

Mr. KILDAY. And that is as far as it can go.

Dr. MORGAN. If there ought to have been a directed verdict of acquittal, then the Judicial Council would have to bust the case.

Mr. KILDAY. So no matter how weak the evidence, or improbable or impossible, still they could not touch it?

Dr. MORGAN. Well, Mr. Kilday, there you get to the question of scintilla evidence: Unless you come from Alabama, that means no evidence. Alabama still has the scintilla rule, but practically every State in the Union has abandoned it. So you have to have more than a scintilla.

Mr. VINSON. Mr. Chairman, I would like to ask a question.

Mr. BROOKS. Mr. Vinson.

Mr. VINSON. Professor, I note with respect to article 17, the reciprocal jurisdiction of courts martial, that you leave that to regulation by the President.

Now, the thought is running through my mind, Why should it not follow the commanding officer? When you have a joint operation and the three services are serving together, the President could prescribe who would have authority to conduct the courts martial; that is, the Army, Navy, or Air Force.

Dr. MORGAN. That is right. You mean who shall be appointed?

Mr. VINSON. That is right.

Now, why should it not say that whenever there is a joint operation that the responsibility should go to the commanding officer? You see, you are writing a code here, that is a code of procedure for uniform justice, but it is going to be dependent in this instance to regulations of the President.

Why should it not be positive, to say that there should be reciprocal authority, but it follows the commanding officer from whatever service he is in. For instance, if an Army officer is in command of a joint operation of the three services, then the Army has a right to conduct the courts martial.

Dr. MORGAN. That is right.

Mr. VINSON. But that is entirely left to the discretion of the President.

Now what harm would there be to say that the reciprocal jurisdiction is tied in with the commanding officer of the branch of service from which he comes?

Dr. MORGAN. That is, you say that the commanding officer should determine——

Mr. VINSON. Well, it is whatever service he comes from. That automatically would cover it.

Dr. MORGAN. Of course, we contemplated that the President would so provide where it was impractical to have the courts martial composed of the men of the service to which the accused belongs.

It would be under those circumstances that he would provide that the court martial might be composed of men of the other services.

For instance, suppose that you had an admiral in the Pacific in the Military Air Transport Service. He is in command. He would have to appoint the court martial, would he not, of this mixed outfit?

Mr. VINSON. That is right.

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Dr. MORGAN. Now, is it your idea that it ought not to be by general regulation but that you should allow the commanding officer to determine that?

Mr. VINSON. The commanding officer, of which branch of the service he belongs to. Then the jurisdiction for the courts fall under that branch of the service. For instance, if you have a joint operation of the Army, Navy, and Air Force in the Mediterranean and if it so happens that a naval officer is in command, then the courts martial of the three services fall under the Navy. If you have down in Panama a joint operation of the three services and an Army officer is in command, then the court martial falls under the jurisdiction of the Army.

Dr. MORGAN. I see.

Mr. VINSON. It is based upon the command of the joint operation and not upon the regulations of the President. Because, you see, you are running into this, if there is not some kind of restriction somewhere: You might have it noised around that this Navy boy is going to be court-martialed by the Army or the Army boy is going to be court-martialed by the Navy.

And you will begin to find out rather early that there will be a good deal of criticisms, with the boys saying: "You better not get before the Army, the Army is going to be rough," or "You better not get before the Navy, the Navy is going to be rough."

Dr. MORGAN. Well, if the Navy lad was tried by the Army court-martial the board of review would be the Navy JAG.

Mr. VINSON. That is right.

Dr. MORGAN. So you have that—have we not?

Mr. RIVERS. Of course, you have the same rules of procedure.

Dr. MORGAN. Yes.

Mr. RIVERS. And the same training for the boys.

Dr. MORGAN. Yes.

Mr. VINSON. You have the same rules of procedure, and everything. It is completely uniform. But it should be positive as to when the reciprocal responsibility is imposed, and it should not be discretionary.

Mr. KILDAY. Do you not have this practical situation: The convening authority has to be the authority who is there and who is in command.

Mr. VINSON. That is right, the commanding officer.

Mr. KILDAY. He is the only person who can convene the court and prefer the charges.

Mr. RIVERS. That is right.

Mr. KILDAY. So in the nature of things it is going to depend on who happens to be the over-all commander at the time.

Mr. VINSON. But——

Dr. MORGAN. Suppose you do not have enough officers of a particular branch to compose the court?

Mr. KILDAY. You have no one else there that exercises the functions of command for this purpose.

Dr. MORGAN. Mr. Larkin has conferred with the Navy and Army representatives on this particular provision and I think I will ask him whether he can clarify that a little more——

Mr. RIVERS. You do not provide for change of venue, do you?

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Dr. MORGAN. No, we do not have any change of venue. And we do not have any affidavit of prejudice which is provided in the civilian courts to challenge a particular judge.

Mr. RIVERS. I can conceive that maybe a Navy man would not want to be tried by the Air Force or vice versa.

Mr. LARKIN. It is our notion, Mr. Chairman, that the services would continue to try their own people to the maximum extent.

In observing the tendency of military operations over the last few years and those that we can probably expect in the future, we believe that the tendency is more to joint types of operation.

Mr. VINSON. That is right.

Mr. LARKIN. And on that basis we felt, even though we expect that each service would normally try its own personnel, that there be provisions so that each service could try the personnel of other services who happen to be serving in isolated areas with them, so that there would be an economy in the use of courts and there would be more expeditious trials.

We could not forecast, however, all the different types of possible joint operations in the future. We felt, therefore, it would be more flexible to leave it to the regulations of the President so that when we came upon circumstances in which it was clearly practical to have the top commander, whether of Army, Navy, or Air Force, have jurisdiction over all of the personnel of the other services serving under him then the exercise of that jurisdiction by the Army, if you will, over Navy and Air Force in that circumstance would be conferred.

But we did not feel it practical to provide automatically in advance the jurisdiction to the top commander because we just cannot forecast the composition of the joint forces or joint operations which may take place.

I think this example might help. Take the invasion of Europe, in which General Eisenhower was the top commander. If we provide that the service of the commander of the joint operation have courts-martial jurisdiction and may not try any Air Force or Navy men in that whole operation, why it would have been a provision that was unnecessary because there were plenty of Navy personnel there, that is there were plenty of appropriate naval officers who could convene courts within that whole big operation. There is no reason why they should not, following the idea that each service will normally try its own personnel.

Now, there may be other types of joint operations which we just cannot foresee at this minute in which it will be entirely appropriate for one service to exercise its jurisdiction over the other services and there will be others in which it is not necessary.

We felt, when they come up and when we can appraise them, at that time we can give the right to exercise this jurisdiction over the other services to the major service or the top commander present.

But to give it on a blanket basis when in some instances it is not necessary may create interservice problems there that we just could not foresee.

Now as Professor Morgan stated, more permanent operations by one service are coming into being which are partially staffed by the personnel of several services: MATS, for instance. And I quite agree that we ought in the near future spell out just what reciprocal jurisdiction should be provided for them.

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But it is pretty much a case-by-case basis, I think, with the idea that we ought to have each service try its own people in the main, and we just left it in this form.

Mr. VINSON. What you have said, Mr. Larkin, would almost persuade me that you do not need the reciprocal provision, if you are going to have each service trying its men. I would visualize it from a unification standpoint, with one commanding officer being responsible for the whole operation, that he should have the right of courts martial on all services.

If you are not going to carry it out, what is the use of putting it in here, then? If you are going to continue to have each service court martial its own men, then you do not need anything with respect to courts martial reciprocal jurisdiction.

Mr. LARKIN. I think it is desirable, Mr. Chairman, that each service try its own men. I think that will take place in most cases because they usually are serving with a sufficient number of their own services and it is entirely feasible that they do so.

Mr. VINSON. If that is true, what is the use of putting it in this article 17, which is a new article? The theory of it was to have a unification. Yet you nullify it in the next breath.

Mr. LARKIN. Well, the idea was to make sure that we do have this statutory jurisdiction service-wide, but I do not think we are quite in a position at this minute to say that in each and every instance in every place this reciprocal jurisdiction should be and can be exercised by the top commander. I do not think it is quite necessary.

The tendency—and I am no military expert—I think is for more and more joint operations and I dare say by the time we have—if we ever do—complete joint operations or where every operation is a joint one, then we have the authority for one court, say an Army court, to try the personnel of the other services.

And the right to exercise that authority at that time will be conferred by the President. We wanted to make sure that we got the statutory authority in the first place. And we are not just sure of the extent of the exercise of it at this moment.

We feel the exercise of reciprocal jurisdiction is an evolutionary matter.

Mr. BROOKS. Mr. Kilday wanted to ask a question.

Mr. KILDAY. Under existing Articles of War, as to persons serving with troops in the field, even civilians are subject to court martial?

Mr. LARKIN. That is right.

Mr. KILDAY. Now, have the existing Articles of War spelled out ithat if a Navy man happened to be in an Army theater he was not subject to court martial by that service, even though a civilian would have been? Would he have to be turned over to the Navy?

Mr. LARKIN. That is correct, Mr. Kilday. There is one provision—n the Articles of War there is a provision that when marines are detached and serving with the Army they then are subject to the Articles of War.

It is more or less of a permanent detachment. But that is the only provision in the present statutes of any reciprocity at all. The Army cannot try a Navy man or an Air Force man now, and vice versa.

Mr. KILDAY. I have never had the question come up, but knowing so many civilians who served with the troops in the field that were

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convicted by court martial in the last war I was just wondering whether there was a prohibition there.

Mr. BROOKS. Mr. Elston.

Mr. ELSTON. I can see a good many reasons why it might be advisable to handle this by regulations rather than write it specifically in the law. If you had, for example, a naval commander in charge of an area it might be that a part of his command would consist entirely of Army men.

Dr. MORGAN. That is right.

Mr. ELSTON. That part of his command may be far removed from his headquarters.

Dr. MORGAN. Yes.

Mr. ELSTON. If the Navy had to try the Army men, by Army personnel because he was in over-all command, it might require the moving around of a great many Army personnel to serve on the court.

Mr. LARKIN. Yes.

Mr. ELSTON. So I can see where it might be advisable for the President by regulations to handle the matter.

Dr. MORGAN. I think that was the view of the services when it was discussed with the representatives of the services, that the only practical way to do it was this way. I acquiesced because I know nothing about the operations, you see.

During World War I, I was safely ensconced in a chair.

Mr. ELSTON. Well, Professor Morgan, I think that you and your committee have done an excellent job. I have not had a chance to read the bill carefully, but I know that you devoted a great deal of time and attention to it and I think you were reaching out and trying to get all the information that would be helpful.

And I think it is particularly commendable that you used one of the members of our staff in your hearings. Mr. Smart, as I understand it, sat with you as an observer of this committee on many occasions.

Dr. MORGAN. Yes.

Mr. ELSTON. And I am quite certain he was helpful to you.

I think you have approached this subject in the right manner.

Now, as I understand it, a man tried in the service today is really given more of an opportunity for the review of his case than a civilian who is tried in the civilian courts?

Dr. MORGAN. Very much more.

Mr. ELSTON. And you have not completely divorced command influence because the commanding officer still has the opportunity to review a case?

Dr. MORGAN. Yes, sir. You see, the commanding officer can do anything in favor of the accused. He cannot do anything against the accused.

Mr. ELSTON. That is right. He could not, for example, increase the penalty.

Dr. MORGAN. No, he cannot.

Mr. ELSTON. But he could decrease it.

Dr. MORGAN. He can decrease it, yes.

Mr. ELSTON. He could set aside entirely.

Dr. MORGAN. Yes. And he could set aside a part of the finding. Or he can bust it for any reason. If he thinks the court martial is spoiling a good soldier, for example, and he wants him back, he can bust it—to use the Regular Army term.

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Mr. ELSTON. He can send it back for a new trial, can he not?

Dr. MORGAN. He can send it back for a new trial, except where there is not sufficient evidence in the record to sustain a conviction.

Mr. ELSTON. Now, if the accused is not satisfied with the commanding officer's final decision, as I understand it, he can appeal as a matter of right to the board of review?

Dr. MORGAN. Well, it goes up to the board of review for any affirmation, anything that is affirmed against the accused goes to the board of review in a general courts martial.

Mr. ELSTON. Now, the board of review can set aside cases because it is manifestly against the weight of the evidence?

Dr. MORGAN. Oh, yes. They review the law and facts, as your bill provided, judge the credibility of witnesses, and so on.

Mr. ELSTON. By the time you get through all of those courts there is really no reason for the Judical Council to review anything except questions of law.

Dr. MORGAN. Yes, that is the way we feel about it.

Mr. ELSTON. And that is exactly what a United States circuit court of appeals would do?

Dr. MORGAN. Exactly. We followed along that line.

Mr. ELSTON. I would like to ask you this question. I think it was since you completed your hearings that a case has been decided by the Supreme Court of the United States.

Dr. MORGAN. The Hirschberg case?

Mr. ELSTON. Yes. To the effect that a person who has left the service, that is, who has been separated from the service, cannot be tried subsequently by a military court for an offense committed prior to such separation.

Mr. KILDAY. Even though he has reenlisted?

Mr. ELSTON. Even though he has reenlisted.

Dr. MORGAN. That is right.

Mr. ELSTON. Now, you have not anything in your bill covering that?

Dr. MORGAN. One thing we have about that is in the case of desertion. If he has deserted in the earlier service, then the fact that he has been discharged from a later service does not deprive the court of jurisdiction.

Mr. ELSTON. Yes. He may have even committed a murder within 3 days of his separation from the service.

Dr. MORGAN. That is right. We have not covered that.

Mr. ELSTON. He reenlists and cannot be tried for it.

Dr. MORGAN. That is right.

Mr. ELSTON. I think this committee can write something into the law that will take care of that ridiculous situation.

Dr. MORGAN. Of course, the Supreme Court put it on the basis of the interpretation of the present statute, as I remember it, and that is that Congress did not intend to have the jurisdiction exercised over the man after he had once been discharged.

Mr. ELSTON. Well, I do not think Congress ever intended anything of the kind.

Dr. MORGAN. I know, but that is what they said. There was not anything in the statute which saved the jurisdiction, and, of course, they interpreted it that way.

Mr. ELSTON. Another question, Professor: Is any provision made for reviewing, we will say, World War II cases?

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Dr. MORGAN. No. We have not touched that. This is prospective.

Mr. ELSTON. No reference to that at all?.

Dr. MORGAN. That is right. This will be prospective.

Mr. ELSTON. Is a separate Judge Advocate General's Corps set up?

Dr. MORGAN. No; we have not touched the corps proposition. That was not in our precept. We have not done anything with reference to what you passed concerning the corps in the Army. We do not touch that. That was a part of the amendment to the National Defense Act.

Mr. ELSTON. I see.

Dr. MORGAN. We did not touch that.

The Navy of course has no separate department, as you know, and the Air Force follows the Navy practice in that respect.

Mr. LARKIN. They have a Department.

Dr. MORGAN. Do they have now?

Mr. LARKIN. Yes.

Dr. MORGAN. Well, the question is whether you think a separate corps should be set up in the various services. That is the point. And as I understood it, the Elston bill inserted that provision on the ground that that was the only effective way of stopping command control.

Mr. VINSON. But that is not dealt with at all in this bill?

Mr. LARKIN. No, sir.

Dr. MORGAN. No, we have not dealt with it.

Mr. BROOKS. That would require additional legislation?

Dr. MORGAN. That will require additional legislation, yes, sir.

Mr. ELSTON. It would not require additional legislation as far as the Army is concerned.

Dr. MORGAN. No, sir.

Mr. ELSTON. It is already provided for in the law that was passed by the last session of Congress.

Just one other question. May I ask what these other budgetary objections were that the Secretary referred to?

Dr. MORGAN. What objection did they have?

Mr. ELSTON. Something about the Budget Bureau objections.

Dr. MORGAN. Well, the first objection was the one that I suggested to you. They thought that our proposal that the appointment by the Judicial Council within the Department rather than by the President was one that they could not pass. I do not know on what basis.

Mr. Forrestal thought that that objection might be well taken and that the appointment ought to be made by the President. And as I told you here, I agree with Mr. Forrestal's decision on that.

Mr. ELSTON. I agree with his decision, but I, for the life of me, cannot see what the Bureau of the Budget has to do with writing a military justice code.

Dr. MORGAN. I am a layman. I could not see it. But I know that that was one of the questions that they raised and Mr. Forrestal——

Mr. RIVERS. Like Mr. Kilday I had the honor of sitting under our distinguished chairman, the gentleman from Ohio, and from what I heard this morning, I am glad to see that the bill which our committee reported out last year had such a large approbation by your group, even though we had the complete opposition of the Army and they brought the largest guns they had, of all caliber, to oppose it.

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But we had then the determination, which this committee always has, to do the right thing and I believe we did. We had the American bar behind us and we had the judge advocates from every place you can conceive of.

And with the setting up of independent training for the judge advocate and that separate set-up away from the chain of command, and so forth, it seems to me as if this could be called the Elston bill as amended.

Dr. MORGAN. Well, I am not prepared to deny it.

Mr. RIVERS. And I do recall the subsequent history of the bill, as it went over to the other and lesser body.

We had to even go there and bring it out. To bring credit to my friend, Mr. Elston, it was opposed over there even by the then chairman. So I am glad you brought it in and I can assure you——

Mr. BROOKS. May I interject this thought: I was also a member of the Elston committee.

Mr. RIVERS. That is right, the chairman was a very important member.

So the old saying comes to life: "As long as the light holds out to burn, it is time for the vilest sinner to return."

It makes me feel that the Army has come back and is now helping us, and everybody is happy. I do believe from your say-so this is a good bill, and it makes me feel good.

And I am going to stop with this statement: You established your record from the very beginning and whatever the court says goes down on the record so it can be appealable.

Dr. MORGAN. That is right.

Mr. RIVERS. And it is a good thing.

Mr. BROOKS. Mr. Anderson, do you have some questions?

Mr. ANDERSON. Mr. Chairman, I have a couple of questions which I wish to ask, but I am afraid time will not permit today. I was particularly interested in this subject of enlisted men serving on a court martial and it might become rather involved before we get through with it.

Mr. BROOKS. Professor, could you be back in the morning?

Dr. MORGAN. Yes, sir, if you desire.

Mr. BROOKS. Just proceed, and then we can take up tomorrow——

Mr. VINSON. I suggest, Mr. Chairman, we take a recess now and ask the professor to come back, and we will have other witnesses as well tomorrow. And I would like for the committee to have the benefit of the professor's opinion on these sections as we read the bill a little bit later on.

And I trust we will try to expedite the hearings so as not to inconvenience the professor very much.

So, Mr. Chairman, I suggest we take a recess now until tomorrow.

Mr. BROOKS. Before we do that, Mr. Chairman, may I say this: Our able staff member here has handed me the names of the witnesses tomorrow. We are going to have Professor Morgan and Mr. Arthur Farmer, of the War Veterans Bar Association; Mr. Richard Wels, of New York County Bar Association; Mr. Fred Bryan, of the New York City Bar Association; and Mr. Franklin Riter, of the American Legion. They will all be here tomorrow as witnesses.

We will then adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 12:45 p. m., the committee adjourned until Tuesday, March 8, 1949 at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

TUESDAY, MARCH 8, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 1,
Washington, D. C.

The committee met at 10 a. m., Hon. Overton Brooks (chairman of Subcommittee No. 1) presiding.

Mr. BROOKS. The committee will come to order.

Yesterday, when the committee adjourned, Professor Morgan was a witness testifying and we adjourned to hear him today. I understand, though, Professor Morgan, that you will be in Washington and would be available at a later date and that some of the witnesses who are here today are from distant points and have remained over and have to go back to their respective homes. If there is no objection and it is all right with Professor Morgan, I would like to proceed to take their statements and then we can go back, unless the committee objects to passing him over.

Mr. ANDERSON. I had several questions that I wanted to ask Professor Morgan, but if it is not inconveniencing him and he will be here then it is perfectly all right to hear the other witnesses.

Dr. MORGAN. Mr. Chairman, I have to leave this evening, but I will come back at any time the committee wants me.

Mr. ANDERSON. The point is I do not want to inconvenience anyone and if there are witnesses here who can only be here today, I think the chairman is right in hearing them first.

Dr. MORGAN. I will be at the command of the committee at any time.

Mr. BROOKS. My thought is this and I leave it to the members of the committee: In the event the House is not in session this afternoon we could meet back in here to hear Mr. Morgan this afternoon.

Mr. ANDERSON. I cannot, Mr. Chairman, because of two other committee meetings that I promised to attend this afternoon.

Mr. BROOKS. Well, you could be back, then, could you, Professor Morgan?

Dr. MORGAN. Yes.

Mr. BROOKS. We are going to need you anyway.

Dr. MORGAN. Whenever you want me to.

Mr. BROOKS. On the consideration of this bill.

Then we can let you know when to come back?

Dr. MORGAN. Yes.

Mr. BROOKS. And if you care to remain around here, it is entirely possible we can reach you before noon.

Dr. MORGAN. All right, I will stay here until noon, at any rate.

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Mr. BROOKS. All right, thank you.

The committee then will call Mr. Frederick P. Bryan, chairman, special committee on military justice of the Bar Association.

Mr. Bryan, just have a seat.

Mr. BRYAN. Yes.

STATEMENT OF FREDERICK P. BRYAN, CHAIRMAN, SPECIAL COMMITTEE ON MILITARY JUSTICE OF THE BAR ASSOCIATION

Mr. BRYAN. Mr. Chairman and gentlemen of the committee, I speak here this morning as chairman of the special committee on military justice of the Bar Association of the city of New York. That association is the senior bar association in New York and has more than 4,750 members throughout the greater city. I may say that my remarks here this morning are not alone the views of the committee, but they are endorsed by the association and have been thoroughly debated before that association in open meeting.

Now we have been studying the question of military justice from the viewpoint as practicing lawyers for a very considerable space of time. We have lived through the Elston bill hearings. We have been through very carefully and consulted with many of the boards that have studied this question since the last war. And as lawyers, we are deeply concerned with this bill from the standpoint of administration of justice.

Nevertheless, we are entirely cognizant of the fact that there are practical military necessities and we are well aware that we are not dealing with justice in the abstract but that we are dealing with military justice in the armed services. And I may say in that connection and merely perhaps by way of qualification of my being here that I myself served in the Air Force for three and a half years overseas in the last war. I was deputy chief of the staff of the Second Air Division of the Air Force. We had 1,000 heavy bombers and between 400 and 500 fighters and some 55,000 officers and men engaged in combat operations. And during that period all of the court-martial cases, that is the general courts, passed over my desk as one of my duties. And I, myself, have acted in every capacity in a general court martial: as law member, as trial judge advocate, as defense council, as president of the court, and as member of the court. I say that only because I am not talking pure theory. I think that I and the other members of my committee and the people with whom we consulted on these questions are practical military men.

Now, I do not think there is any serious question any more as to the need for court-martial reform. I am not going into that question. The very fact that your committee is sitting on this proposed code and the very fact that the proposed code has been drawn is indicative of the need. And the question before your committee as we see it is, therefore, whether this proposed code of military justice accomplishes the necessary essential reforms.

Now, we believe that this is a very fine bill. The committee which drew it and its staff—the assistant secretaries on the committee, Professor Morgan and his associates—have done a very remarkable piece of legislative draftsmanship. We think it is a great improvement on all previous legislation of this character. And we believe that in general it provides a workable and uniform code for the admin-

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istration of military justice and in this respect alone it fulfills a very long-felt need. It makes a number of important changes in the system, almost every one of which is salutary and good. And it is also as far as clarification and arrangement is concerned a very fine piece of legislation.

Now you wish I could go further and say to you gentlemen that in our judgment this was the ultimate answer to the military justice question. Unfortunately we cannot do that, for reasons which I will come to later. But first I want to comment on a few of the excellent specific provisions of the bill which we think are of great importance here and to repeat again to you gentlemen that this bill is a very good bill as far as it goes and we are behind it, with the exception that I will mention later.

Now one of the major criticisms that appeared in almost every report on military justice and in fact voiced by almost every officer and enlisted man who had intimate contact with it is the frequency with which the accused was represented by defense counsel who did not have the capacity, no matter how good their intentions, to adequately protect the rights of the accused. The selection of defense counsel was often done haphazardly and I am frank to say to you gentlemen from my own experience in many cases you went over the list of officers and you suddenly found a fellow over here who was not doing much of anything useful and you said; "We can spare him and we can throw him in as defense counsel, he hasn't much to do."

Now this bill seeks to correct that situation and correct it very effectively. It provides, as you gentlemen are aware, that the defense council be a qualified legal specialist—a trained lawyer in effect—and he must be fully competent to protect the rights of the accused and to protect his client. That may seem an unimportant thing to you gentlemen, or some of you, but all of you who are lawyers realize how vital it is if you are going to have justice that you have competent representation of the accused. For example, the provision in the bill providing that defense counsel may file briefs on an appeal is a particularly good one and I think will protect the rights of the accused on appeal. The new set-up of the courts, whereby you have a law officer on the one hand who exercises judicial function and the lay members of the court—we will call them that for want of a better name—on the other who in effect perform the functions of a jury, is excellent. I think that that serves again as a measure of protection to the accused. It prevents to some extent a stampeding of the court by undue influence from the commander which sometimes happens, and I am going to discuss that later, and also it makes for a record that is intelligible on an appeal and a record on which a board of review can act and pick out the various rulings of the law on questions of law and on questions of evidence and to proceed on an intelligent appraisement of the course of the trial.

The provisions of the code as to review are in general good. We think particularly they are a great improvement on the review provisions in the Elston bill. The Elston Act we felt had rather cumbersome review provisions which were difficult to understand and we felt would be extremely difficult to operate in practice. The system of having a single board of review with appropriate branches in each of the armed services and a simple review procedure where the board of review can pass upon questions of weight of evidence as well as

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questions strictly of law I think is very good. I think there is one minor criticism that might be made there and that is the provision in section 66–E which provides that if the Judge Advocate General disagrees in essence with the finding of a board of review he may then take the matter and refer it to another of his boards of review for reconsideration. That seems to me to be sort of a double-take proposition and I do not think 66–E is a very salutary provision.

Mr. RIVERS. I want to ask in that connection, if you will recall last year, in the Elston bill which we think was pretty good legislation we wanted to make the judge advocate independent from all the chain of command.

Mr. BRYAN. That is right.

Mr. RIVERS. And I think that is a good thing. But if he is independent and free from any of the general staff or whatever you want to call it—the hierarchy—he will be more in the position like the Supreme Court. He will be free to give the best of his judgment without any fear of reprisal, so to speak.

Mr. BRYAN. Congressman Rivers, I could not agree with you more——

Mr. RIVERS. Yes.

Mr. BRYAN. On the question of the independence of the judge advocate general's arm. I am going to come to that a little later in more detail.

Mr. RIVERS. Yes.

Mr. BRYAN. But I do feel that the independence of the judge advocate general is of prime importance here.

Mr. RIVERS. Yes.

Mr. BRYAN. In the whole picture.

Mr. RIVERS. That is right, sir.

Mr. BRYAN. I am going to touch on it a little later in another connection, if I may.

Mr. RIVERS. Therefore, if he is independent, maybe there would not be such criticism as might come up under 66–E, as you referred to. Would you not agree with me on that?

Mr. BRYAN. I think that might be so, Congressman.

Mr. RIVERS. There would be that tendency, at any rate.

Mr. BRYAN. I think that might be so, sir.

Nevertheless, I think if the judge advocate general invests in the board of review, particularly when it is composed of a competent board of officers, the authority to pass on a question, you should not have second guessing on it. I think that ought to be final and binding, unless there is something outside of the record that might induce him to do that.

Now we come to the second branch of the review machinery, which is the judicial council. It seems to me to have what is in essence a supreme court of military justice under the National Military Establishment composed of men of judicial caliber, because the requirements for members of the judicial council and the perquisites and compensation given them give them the position for all practical purposes of United States circuit court of appeals judges, is in my judgment highly salutary.

As you gentlemen know, a bill was introduced in the Senate which was designed to permit appeals to circuit courts of appeals from any person feeling aggrieved by a decision of a court martial in the last war.

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I would not comment on the merits of that bill. It opens up a very wide field to our already overburdened circuit courts of appeal if we have that legislation. I mention that in that connection merely because if you have this judicial council of the stature which this bill makes it, then and in that event you are going to limit in my judgment most of the cry for purely nonmilitary review of court-martial decisions. You may very well avoid situations such as have arisen in two United States district courts recently where the Military Establishment has been very severely criticized by sitting judges for prejudice, or injustice, and for domination of the courts by a commanding officer. I, myself, do not feel that we want a general appeal to the civilian courts, but I do think we want a body of qualified judicial officers within the national military establishment of judicial caliber to act as the final court of review, for two reasons: One, in individual cases and two, because with such a body you gradually evolve a system of case law for the Military Establishment which would be of immeasurable value to all of the armed services in the various specific situations that occur.

In other words, no code is the complete answer to a legal picture. You cannot try cases by a code. You have to develop in all law a body of precedents which will govern the various situations that arise in the administration of military justice. Then there is the salutary provision that the supreme judicial council meeting with the various judge advocates of the armed services will make continuous observation of the system and make recommendations for its proper administration and improvement.

Now that again is an excellent thing because you gentlemen who are much more experienced in legislation than I am know very well that any new code requires ironing out of little things which arise through its practical experience, requiring minor amendments here and there and requiring procedural changes. In New York, for example, we have a judicial council for many years which makes recommendations with respect to the New York Civil Practice Act and the administration of justice there. It is making constant improvements in our procedural system and various recommendations as to our substantive system.

Mr. DURHAM. May I ask a question right there?

Mr. BROOKS. Mr. Durham.

Mr. DURHAM. Do you think that this judicial board should go beyond the authority given in the present act in reviewing only the law and not reviewing the facts?

Mr. BRYAN. I am inclined to think, sir, that it is not necessary to have that board review the facts. Let me put it this way: If a situation arises in which there are no facts to sustain a conviction, then as I see it that becomes a question of law anyway.

Mr. DURHAM. Yes.

Mr. BRYAN. Now once you start going beyond that, I think, you place an intolerable burden on the judicial council more than it can possibly handle because everything goes up. We have had the same experience in New York, for instance, with respect to appeals to our court of appeals. If there were not an intermediate court—an appellate division—where we stop at questions of fact a single court of appeals would just be so overburdened even as a practical matter

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that they could not handle the load. And I think with a judicial council of this nature and with competent boards of review as intermediate appellate bodies it is not necessary to have the final arbiter review questions of fact. The Supreme Court of the United States does not do that either, of course. Does that not answer your question?

Mr. DURHAM. Yes.

Mr. RIVERS. You appeal from the record anyway, do you not?

Mr. BRYAN. Yes, surely, Mr. Congressman.

Mr. RIVERS. And the record begins from the beginning of the trial, under this act.

Mr. BRYAN. They have the complete record before them.

Mr. RIVERS. That is right.

Mr. BRYAN. Right, sir.

Now, I have said a good deal for this bill. I could say a great deal more, but I know you gentlemen have only limited time.

I now want to come to what I feel is the major deficiency. All of you gentlemen have heard arguments pro and con with respect to this controversial question of command control. We have felt for a long time, in fact all the way through our studies of this problem, that the question of command control was perhaps the most vital single point in military justice reform. For example, we were disappointed, frankly, in the Elston bill in that respect. We felt that the Elston bill, while setting up an independent judge advocate's department, as Congressman Rivers mentioned a moment ago, nevertheless had not transferred to that independent judicial arm the functions that were necessary to remove the possibility of command influencing or dominating the courts.

Now, the fact is, gentlemen, and I do not think it can be seriously contradicted, that on occasion in the past and sometimes with the best motives in the world—and I am not criticizing the motives of commanders—command has influenced or dominated the court, a court composed of officers whose whole military future lies in the hands of the man appointing them.

Mr. ELSTON. May I ask right there—

Mr. BROOKS. Mr. Elston.

Mr. ELSTON. How do you figure a commanding officer could influence a separate judge advocate general's corps?

Mr. BRYAN. I think, sir, it would be very difficult for him to influence the separate judge advocate general's corps. As I understand this bill, it does not create for all of the armed services a separate and independent judge advocate general's corps, in the same sense that the Elston Act did for the Army. But the members of the court of course are not members of the Judge Advocate General's Department. The members of the court under this system are officers under the direct command of the convening authority. They are officers pulled from various units within his command and appointed by him to do a specific job, which is to sit on a court-martial on one or a series of cases.

Now, those officers are dependent on their commanding officer for what? No. 1, for promotion; No. 2, for efficiency reports; No. 3, for leaves; No. 4, for assignments; and No. 5, for that little miscellany of things where the beneficence of a commanding officer toward an officer is of paramount importance.

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Mr. ELSTON. How does the pending bill change that?

Mr. BRYAN. The pending bill does not, sir, and that is precisely my point here. The pending bill does not change that and that, sir, I believe to be the major deficiency in the pending bill.

Mr. ELSTON. Well, it would seem to me if you get a separate Judge Advocate General's Corps you remove it from influence much more than you would under the pending bill.

Mr. BRYAN. I think that is so, sir. You have to have two things, though, it seems to me. One is a separate Judge Advocate General's Corps. That gives the Judge Advocate General his measure of independence so he can act in a judicial capacity throughout. Now you have to place in the hands of the independent Judge Advocate General's Corps which you created the functions which will enable him to carry out that judicial function which you have given him. One of those functions, and a very important function, is the appointment of the court itself. And what I advocate here before your committee is that this bill—the uniform code— be modified so that an independent Judge Advocate General's arm will appoint the members of the court. Thus the court will not be appointed by a commander who has complete control over the military future of the men on that court. It will be appointed from panels submitted by various commanders to a Judge Advocate General's convening authority. That panel may be selected from a wide variety of units so as to give a broad selection of court members in specific situations If you do that, sir; and if in addition to that you have the defense counsel appointed by the Judge Advocate General's Department; and, thirdly, withdraw from the commander the initial power of review except as to clemency on the one hand or remission of sentence on the other, then you have an independent branch as you just described, Congressman, with functions which enable it to act in a judicial and objective capacity.

Mr. DURHAM. Suppose you gave the judicial council under this bill the full authority to review all facts and law and everything else; would you not get away from command influence to a large extent?

Mr. BRYAN. I think to some extent, sir. As a matter of fact, this bill has a number of features to it which are designed to protect against command influence. But command influence, sir, is a very subtle thing. A commander, as you gentlemen well know, does not get his court to go in a room and say, "Gentlemen, I want you to bring in a verdict" or "I want you to bring in a sentence of some sort or kind." It is a very subtle process. And the removal of the appointing power—this reviewing power—from command is the thing that is going to cut the Gordian knot, in my opinion.

Mr. RIVERS. We think that Mr. Elston did a very fine job on this particular legislation.

Mr. BRYAN. No question about that.

Mr. RIVERS. He did such as good job that he had to go over to the Senate and help to get through over there.

Mr. BRYAN. Yes.

Mr. RIVERS. And we had the complete unsupport of the military.

Mr. BRYAN. Yes; I know that.

Mr. RIVERS. But we think we got a fine bill, considering the many obstacles that were very beneficently tossed in our unsuspecting path, if you catch the point.

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Mr. BRYAN. Yes.

Mr. RIVERS. Mr. Elston did a very good job, we think, and tha is why we are making him sit with us. We feel that with your help and the other people that want to do the right thing, we can put i these safeguards.

Mr. BRYAN. Yes.

Mr. RIVERS. And I say that without any reflection on the military

Mr. BRYAN. Yes, Congressman; none at all.

Mr. RIVERS. None at all; that is right.

Mr. BRYAN. I know that commanding officers who on occasio felt it was necessary to bring pressure on a court here and there we not doing it with any malice. They were doing it for what the thought was the best interest of their command.

Mr. RIVERS. And self-preservation is just as strong today as it w a million years ago.

Mr. BRYAN. That is right.

Mr. ELSTON. You know, there is much that a Federal judge ca do which brings a little pressure on a jury, too, but as long as the ca can be reviewed it has always been felt that they could correct a errors thay may have been committed in the district court. You ca not remove a court-martial hearing entirely from every possibility influence.

Mr. BRYAN. You cannot, sir.

Mr. ELSTON. But, if you have a complete review of law and fa do you not think that will assure a fair trial?

Mr. BRYAN. I think, if I may use the illustration you used a mome ago, Congressman, the Federal judge and the jury, the great differen between the Federal judge and the jury and the commander and t court is this: If the Federal judge makes any remarks to that jur they are all made on the record, and that record goes up to the appella court and is before it. If the commander is inclined to influence b court, (a) the commander is not there at the trial, and (b) the cor mander is not talking to the court directly or talking to it in t courtroom. Therefore, any attempt by the commander to influen or dominate the court does not appear on the record. So it is difficul if not impossible, for a reviewing board to catch that and pass on i

Mr. ELSTON. Well, the record in a trial in a United States cou does not indicate the emphasis.

Mr. BRYAN. I agree to that.

Mr. ELSTON. Does not indicate the attitude of the court.

Mr. BRYAN. Yes.

Mr. ELSTON. Does not indicate sometimes that he is a prosecutin officer as well as the court. I think you have seen it yourself.

Mr. BRYAN. I certainly have.

Mr. BROOKS. Besides, Mr. Bryan, the rules of the Federal cou permit the trial judge to go very far in expressing himself in crimin cases.

Mr. BRYAN. That is right.

Mr. BROOKS. And frequently he suggests to the jury that if the bring in certain verdicts he will order a new trial.

Mr. BRYAN. But that again is a situation where the judge, wh corresponds now to the law officer under this new code, makes certa statements. And I grant you, Congressman Elston, you cannot catc those shadings on the record, as all of us who have tried cases know

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evertheless, the words, at least, are on the record. And, when we lk of the commander, the words are not a part of the record at all. hey are completely extrarecord, and nobody knows what was said, id no reviewing authority has anything before it.

Now I have taken I think more time perhaps before you gentlemen ian I should have. I want to say this to you. It seems to me, as r as the command function is concerned, the requirements of military scipline are completely sad if the following things happen: A commanding officer has an accused arrested, charges are preferred against m, and the case is referred for trial. There is the dividing line. nce the case is referred for trial, no longer has the commander any terest in the case except to see that objective justice is done. It ems to me that the argument for retention in command of the power appoint the courts is perhaps only for one reason: That the retention the power carries with it the ability to influence or dominate. Now, iat ability to influence or dominate is something that the command savows.

Mr. ELSTON. May I ask a question right there, Mr. Chairman?

Mr. BROOKS. Mr. Elston.

Mr. ELSTON. What would you do with a commander at an isolated ost where it is not easy to assemble a court? If the Judge Advocate eneral has to do the assignment and has to convene a court from reat distance, and particularly during wartime, might not an accused erson be compelled to languish in jail for an unreasonable length of me?

Mr. BRYAN. I think it is entirely possible, sir, that where you have n isolated post the accused may conceivably suffer by being in jail longer period than would normally be the case. I think, however, iat is compensated for by this: If a man is accused of a major offense, e is no longer any good to the commander at that point. What the ommander wants is to get him out of the way; that is, out of his hair, you want to put it that way, as rapidly as possible. That is largely question of transportation. Very rarely do you have a general ourt martial in a relatively front-line situation. In most cases, lmost all cases, the man goes to the rear echelon and is tried there here a court can be summoned from a wide body of men appointed y a Judge Advocate General. I think, Congressman, that is largely question of transportation rather than languishing in jail. And here may be cases where transportation is so inadequate that there is long stay in the "hoosegow," if you want to put it that way.

Mr. BROOKS. Let me ask you this——

Mr. BRYAN. Yes.

Mr. BROOKS. Mr. Bryan, would you not lose the element of knowledge of local influence in selecting your personnel if you turn it over to the Judge Advocate General's Corps, we will say, which might be set up at a distant point and not know the temperament and the local environment or the local conditions of the members of the panel?

Mr. BRYAN. I think in the first place, Congressman, that the temperament and local conditions in general are not overly conducive to objective justice.

Mr. BROOKS. We lawyers jealously guard the right to go down the venire and interrogate the talesmen——

Mr. BRYAN. Yes.

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Mr. BROOKS. Of a prospective jury, however. We think that that has a great deal to do with fundamental justice; is that not true?

Mr. BRYAN. I think that is right, sir. But, if I may put it this way, we have also to draw a distinction, I think, Congressman, in our thinking between a local jury and a panel of officers under the direct command of the commander who is directing the trial. In other words, a local jury which was appointed out of the sheriff's office or was appointed out of the public prosecutor's office might be a local jury, but I think you might agree with me, Congressman, when I say that I at least, and I think you would, too; would be reluctant to try the accused before a jury composed of such persons. And that, in my judgement, is the distinction.

Did I answer you?

Mr. BROOKS. Thank you very kindly for that answer.

Mr. BRYAN. I will just finish up here very briefly.

I think we have to realize, gentlemen, and I know you gentlemen do, that the American armed services are no longer the old type of professional Army. They are citizen armed services. Their fighting capacity is dependent on morale. And those gentlemen of you who have heard some of the gripes—and Heaven only knows the American soldier gripes, and I hope he always will, because if he does not grip there is something wrong with him—are familiar with the criticism that has arisen from men subject to the old court-martial system. In my judgment it was not conducive to the best morale. Morale will never be so high as when the individual American soldier or sailor or airman is convinced that he is going to get a fully square deal if he is accused of a crime or offense and that he is going to be tried under a system of justice which is in accord with the traditional philosophy to which he has been accustomed. That is not going to interfere with his military efficiency. Far from doing that, it is going to increase his military efficiency. And we therefore urge upon this committee the passage of the proposed uniform code of military justice, H. R. 2498, with the addition of the safeguards that I have described to you gentlemen, which is only a comparatively small step forward procedurally but a very large step forward in actual effect. Remove from command the power to appoint the court, the power to appoint defense counsel, and the power to make initial review except for clemency or remission of sentence. As modified, I believe such a bill will be a really monumental piece of legislation.

Thank you for your patience.

Mr. BROOKS. Thank you very kindly, Mr. Bryan, for a very fine statement.

Mr. Anderson, I do not think you asked any questions. Do you have any you want to ask?

Mr. ANDERSON. Mr. Chairman, I want to make it plain to the committee and the witnesses that I am not a lawyer. I am a farmer. I am to sit here and listen to what all the lawyers have to say and then have to come up with an answer.

Mr. BROOKS. Mr. Gavin here is a member of the committee. Mr. Gavin, would you have any questions right now?

Mr. GAVIN. No. I am sorry I did not hear the earlier part of your statement. It was very, very good and I listened with a great deal of interest.

Mr. BRYAN. Thank you, sir.

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Mr. BROOKS. We are pleased to have also Mr. Doyle with us. Mr. Doyle, do you have any questions? Mr. Doyle is a lawyer and is from California.

Mr. DOYLE. I appreciate the courtesy of sitting with this subcommittee while not being a member of it. There are two things that occurred to me, Mr. Chairman. I am interested in article 67, which provides that only lawyers who are admitted to practice before the United States Supreme Court shall be appointed to the counsel.

Speaking as a western man, that provision would eliminate from consideration many of the most brilliant lawyers we have, some of whom are west of the Mississippi River. Very few men in the western part of our country are ever admitted to practice before the Supreme Court of the United States. I happen to be, and have been for about 20 years.

But I know that is a practical problem, and I raise the point before the committee that that might be considered as not necessary.

Mr. BROOKS. Do you care to comment on that?

Mr. BRYAN. I have not, frankly, Congressman, given it much thought. I think perhaps I view it from an easterner's point of view. I had not perhaps realized those considerations that you mentioned.

I think the important thing or the object was to get the very top layer of the bar, if you want to call it, by way of qualification. Now, it does not seem to me to be vital that the man be admitted to practice before the Supreme Court of the United States.

I, myself, know a number of very able lawyers that have never been before the Supreme Court.

Mr. RIVERS. Had no reason to be.

Mr. BRYAN. And had no reason to ask to be admitted because they just did not happen to get there.

Mr. DOYLE. I am glad you agree with me.

May I ask this other question, Mr. Chairman. I have never practiced before a court martial, but I am in an area where there are many courts martial, and I have personal knowledge of the fact that many boys are given court-martial judgments of dishonorable discharge.

Mr. BRYAN. Yes.

Mr. DOYLE. Boys of immature age and boys who only commit offenses as the result of stress and strain of war or of unusual circumstances which immaturity is the cause of rather than deliberate design or deliberate intention to commit a serious offense.

I would feel, Mr. Chairman, that under section (e), article 67, which limits the Judicial Council to considering matters of law only—if you will notice subdivision (e).

Mr. BROOKS. Yes.

Mr. DOYLE. I wonder if Mr. Bryan would not differentiate that section for us. It seems to me that opens up the Judicial Council for consideration of facts as well as law, does it not?

Mr. BRYAN. Well, Congressman Doyle, where you have a lack of sufficient evidence to support the findings, for all practical purposes I think that means that there are no facts in law sufficient to support them. In other words, you review the facts.

You might almost say that you apply the old scintilla rule. You say there is not a scintilla of evidence to support these findings. I think that is what that means. That is my impression.

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Mr. DOYLE. Would you not feel that in the absence of a review board, being named by the judge advocate's office, that the Judicial Council should also have the power to review the facts as an essential element to get away from the danger of command influence?

Mr. BRYAN. Let me put it this way, Congressman: It would seem to me that the review boards should be appointed by the Judge Advocate General's Department as part of an independent judicial arm.

And if the review boards were so appointed, that it seems to me would fulfill the requirement that you just mentioned. Now in the absence of that it might very well be that this committee would want to give consideration to enlarging the jurisdiction of the Judicial Council.

But what I am afraid of, as I said before, sir, is that you have a court composed of three men and when you have a court composed of three men sitting on a judicial system covering 2,000,000 plus you are going to have them so crowded that I have some concern as to whether they will be able to do the proper job if you enlarge their jurisdiction to that extent.

Mr. DOYLE. May I just make this one statement, Mr. Chairman. I would feel that it might be a hardship on the Judicial Council, but if there was a miscarriage of justice as the result of the Judicial Council not being enabled to consider the facts and it was your son or my son that was involved, you would not worry about the heavy load on the Judicial Council.

Mr. BRYAN. There is no question about it.

Mr. DOYLE. I would like to make it clear, Mr. Chairman, with your courtesy, that I feel very strongly that a military court is not comparable to a civilian court and that we ought to permit the Judicial Council to review the facts as well as the law.

Mr. BRYAN. I certainly, if I may say so, would have no strong dissent on that score at all. And if I may say one other thing: It does seem to me that the independence of the review board is an important factor in the consideration of how much power, that is how much scope or jurisdiction, you are going to give to the Judicial Council.

Mr. GAVIN. As the gentleman states, he approves of H. R. 2498. You summarized in the latter part of your statement certain recommendations. Would you reiterate those statements again?

Mr. BRYAN. Yes, sir.

We propose the following modifications of the bill as written. No. 1, that the commander who is now the convening authority at whatever level do the following: (a) of course, have the accused arrested; (b) go through the process of having the charges preferred, and (c) refer the case for trial, at which point—the man having been referred to trial—an independent judicial system along the lines of Congressman Elston's very excellent system, take over, and that the independent judicial arm, which we will call the Judge Advocate General's Department, then appoint the court from a panel of officers submitted to it and selected by commanders in the various units under that judicial convening authority; (2) that it appoint defense counsel; and (3) when that record goes up for review it passes through the commander's hands merely for purposes of possible exercise of clemency or remission of sentence, and then passes directly

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to a reviewing authority for confirmation or whatever process may take place. That reviewing authority, of course, is a part of the independent judicial arm.

Mr. GAVIN. What is your recommendation for defense counsel for the accused?

Mr. BRYAN. Well, I think that the present provisions as to qualifications of defense counsel are excellent. The thing that concerns me is that defense counsel is still appointed under this bill—article 26 I believe—by the convening authority who is the commander.

In other words, the defense counsel is appointed in effect by the very man who is responsible for preferring the charges. That, I think, is wrong. I do not think the defense counsel should be so appointed.

Mr. GAVIN. What is your recommendation on that?

Mr. BRYAN. My recommendations are that the defense counsel be appointed by the judicial arm—the independent Judge Advocate General's Department. And I may point out to this committee, as I understand it in recent English legislation on this same subject, which I think is going to be discussed before this committee at some length a little later, they set up in the Judge Advocate General's Department, so concerned are they with the rights of the accused, two separate departments: One, a Department of Prosecution and two, a Department of Defense, so that you do not get one unit prosecuting and defending, at the same time. I think that is another matter that your committee wants to study.

Mr. BROOKS. Thank you very much, Mr. Bryan. We are intensely interested in your statement and we appreciate your coming here.

The committee has four more witnesses, by the way, to be heard before noon, and I think if the committee desires, we can proceed rapidly with them so as to hear all of them and so as not to keep them over an extra day.

Mr. BRYAN. May I, Mr. Chairman, express my thanks to your committee for your courtesy and consideration to me. I have enjoyed appearing before you very much, indeed.

Mr. BROOKS. You have made a very fine statement, sir.

Mr. BRYAN. Thank you, sir.

Mr. BROOKS. Mr. Richard H. Wels, chairman of the special committee on military justice of the New York County Bar Association. Mr. Wels.

STATEMENT OF RICHARD H. WELS, CHAIRMAN, SPECIAL COMMITTEE ON MILITARY JUSTICE OF THE NEW YORK COUNTY LAWYERS' ASSOCIATION

Mr. WELS. Mr. Chairman and members of the committee, I shall try to be brief.

I am appearing before you as a representative of the New York County Lawyers' Association and speak to you as a chairman of the association's special committee on military justice.

I should like to point out that all of the members of our committee saw active service overseas during World War II, and that they are presently Reserve officers of the Army, Air Force, and Navy.

I myself am a lieutenant in the United States Naval Reserve, but the views expressed by me here are, of course, not to be construed as the views of the Navy Department.

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With the permission of the committee, I should like to place in the record a copy of the report made by our committee last fall containing our recommendations to the group headed by Professor Morgan which drafted the bill now before you.

This report, which was made at the invitation of Professor Morgan, met with the full approval of our association.

(The report referred to follows:)

REPORT OF THE COMMITTEE ON MILITARY JUSTICE OF THE NEW YORK COUNTY LAWYERS' ASSOCIATION

Earlier this year Secretary of Defense James V. Forrestal appointed a committee consisting of Prof. Edmund M. Morgan, Jr., of the Harvard Law School as chairman, Under Secretary of the Navy W. John Kenney, Assistant Secretary of the Army Gordon Gray, Assistant Secretary of the Air Force Eugene M. Zuckert, and Felix E. Larkin, assistant general counsel of the Department of Defense, as executive secretary, to draft a Code of Military Justice uniform in substance and uniform in interpretation and application to all of the armed services. In his precept establishing this committee, the Secretary indicated that this uniform code should protect the rights of those subject to the code without impairing the performance of military functions.

Having noted the previous activities of this association in the field of military and naval justice, the Morgan committee on September 27, 1948, invited the association to submit our recommendations with respect to deficiencies in the present Articles of War and Articles for the Government of the Navy. Upon referral of Professor Morgan's letter to our committee, we have carefully reviewed our earlier reports on military justice, the changes effected by the Elston bill enacted in the closing days of the second session of the Eightieth Congress, and the proceedings before the House and Senate Committees on the Armed Services, and have generally studied the problems of military and naval justice.

The limitations and inadequacies of our systems of military and naval justice were graphically portrayed to the public and to Members of Congress during and after World War II by many service men and women, lawyers and laymen alike, who had had first-hand experience with the operation of such systems, and found that resemblance between them and the courts which they knew as civilians was largely coincidental. It was disturbing to them to find that the same official was empowered to accuse, to draft and direct the charges, to select the prosecutor and defense counsel from the officers under his command, to choose the members of the court, to review and alter their decision, and to change any sentence imposed. They were shocked to learn that an offense committed by an officer was subject to different treatment and punishment than the identical offense committed by an enlisted man. They were surprised to find that many of the judges, prosecutors, and defense counsel participating in courts-martial were neither lawyers nor trained in the law, and that, in the naval services, there was not even the minimum requirement that a single law member be on a court.

The reports that came back of these things to the civilian community, together with specific instances of abuse in the court-martial process, initiated a flow of bills into the congressional hopper and an expression of aroused public opinion which gave promise that reforms would be accomplished. The Secretary of War and the Secretary of the Navy each appointed boards of distinguished citizens to review the court-martial systems of their respective services, and to make recommendations for a thoroughgoing revision of military and naval justice. The famous Vanderbilt report, made to Secretary Patterson, and the Ballantine and Keeffe reports, made to Secretary Forrestal, all found substance to the charges which had been leveled at the court-martial systems, and presented definitive recommendations for the elimination of the conditions which made such charges possible.

The jugular vein at which all such boards aimed their recommendations was the domination and control of the court-martial systems by command. All such boards concluded that amendments to the Articles of War and the Articles for the Government of the Navy which correct other inadequacies of military and naval justice, but which failed to check command control, effect only secondary reforms which become meaningless in the absence of the rooting out of the major sources of abuse and injustice. As to this, the Vanderbilt committee said:

"The system of military justice laid down in the Manual for Courts Martial not infrequently broke down because of the denial to the courts of independence of

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action in many instances by the commanding officers who appointed the courts and reviewed their judgments; and who conceived it the duty of command to interfere for disciplinary purposes. Indeed, the general attitude is expressed by the maxim that discipline is a function of command. Undoubtedly, there was in many instances an honest conviction that since the appointing authority was responsible for the welfare and lives of his men, he also had the power to punish them, and consequently the courts appointed by him should carry out his will. We think that this attitude is completely wrong and subversive of morale, and that it is necessary to take steps to guard against the break-down of the system at this point by making such action contrary to the Articles of War or regulations and by protecting the courts from the influence of the officers who authorize and conduct the prosecution."

Implementing this finding, the Vanderbilt committee recommended (*a*) the appointment of courts by the Judge Advocate General's Department, instead of by command; (*b*) the assignment of defense counsel by the Judge Advocate General's Department, and the requirement that defense counsel be a trained lawyer; and (*c*) that the initial review of decisions, except for purposes of clemency, be in the hands of the Judge Advocate General's Department, instead of in the commanding officer who initiated the proceedings and convened the court. Corollary proposals provided that the officers in the Judge Advocate General's Department should be qualified lawyers insulated from the indirect influence of command by having their promotions, assignments, leaves, and fitness reports emanating from the Judge Advocate General's Department rather than from command.

It was felt that once command had filed its accusations and placed a man on trial, the judicial machinery should be in the hands of an independent judicial system within the service which, not subject to pressures and influence from command, would insure the accused the same fair trial by competent personnel that he would receive in our criminal courts if he were a civilian. In this recommendation and belief our association concurred, as well as the American Bar Association, the Association of the Bar of the City of New York, the War Veterans Bar Association, and many other veterans and bar groups.

On February 20, 1947, the War Department completely rejected these recommendations. The position of the Army with respect to them was summarized by Secretary of the Army Kenneth Royall in the *Virginia Law Review* for May 1947, where he said:

"The War Department feels that the committee received a rather exaggerated impression of the prevalence or seriousness of pressure exerted on courts martial. However, there were doubtless instances where appointing authorities entirely misconceived their duties and functions and overstepped the bounds of propriety."

Extended hearings on the bills relating to the Army court-martial system were held by the House Committee on Armed Services, but no House hearings have been held on the Navy bills. No hearings at all have been held by the Senate Committee. The House committee reported out H. R. 2575, introduced by Representative Elston, of Ohio, at the request of the Army, and this bill in amended form was passed by the House. In the closing days of the second session of the Eighteth Congress, the entire Elston bill was introduced by Senator Kem, of Missouri, as a rider to the Selective Service Act of 1948, and, without the benefit of any Senate hearings, was accepted by the Senate, and signed by the President as Public Law 759 of the Eightieth Congress. It becomes effective on February 1, 1949.

The passage of the Elston bill was hailed on the floor of Congress and in the press as the accomplishment of the reforms in military justice which had been sought by our association, among others. A label of "court martial reform" was placed upon the bill which was scarcely indicative of its contents. Such labeling was highly dangerous in that it gave the public and the press the impression that substantial reforms had been accomplished, and thus reduced the possibility of further congressional action to effect the real reforms which are still lacking. Accordingly, it is important to make clear just what the Elston bill accomplished.

First of all, it must be noted that even such reforms as are effected by the Elston bill have no application to the Navy, the Marine Corps, the Coast Guard, and, probably, the Air Force. Just as the changes in military justice which were adopted in 1921 were restricted in their application to the Army, so the Elston bill is piecemeal legislation.

The most important phase of the Elston bill to our mind is such change as it has effected in the relation of command to the courts-martial systems. Such

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change is reflected by section 246 of the bill, amending section 8 of the Nation Defense Act (10 U. S. C. 61) to provide for a Judge Advocate General's Corp This provides for a separate corps, headed by a major general and three brigadi generals, which shall have a strength of not less than 1½ percent of the authorize active commissioned-officer strength of the Army, together with such warrar officers and enlisted personnel as may be assigned by the Secretary of the Arm This corps is given its own promotion list, similar to that of the Medical Cor and Chaplains Corps, independent of the line. This was vigorously oppos before Congress by the Army on the ground that thereby too great a preferen was given to officers performing legal duties over line officers. It may be signi cant that the Army has not yet moved to put into operation this or other prov sions of the Elston bill.

The establishment of such a corps, with its own promotion list, has been wide hailed as having established "an independent Judge Advocate General's Depar ment," but this is far from the fact. As was said in an editorial appearing in t August 1948 issue of the American Bar Association Journal:

"The new statute accomplishes some desirable improvements in military justic supplementing those which the Secretary had power to introduce by his own actio along lines recommended by the Vanderbilt committee nominated by our associ tion and appointed by the War Department. The Elston bill creates a Jud Advocate General's Department which is independent in the sense that it h authority to handle its own administrative matters, but, as has been pointed o several times in these columns (33 A. B. A. J. 40, 45, January 1947; 33 A. B. A. 319, April 1947; 33 A. B. A. J. 898, September 1947), command remains co pletely in control of the operation of the Army's courts-martial system."

Under the Elston bill the power to appoint courts remains in command. Und the Elston bill the power to review, in all its aspects, the decisions of court martial remains in the commanding officer who convened the court. Under t Elston bill prosecutors and defense counsel are required to be members of t Judge Advocate General's Department or otherwise qualified lawyers only " available"—a qualification which realistically leaves the situation in status qu We believe that in all instances and in all the services, the prosecutor and defen counsel should be members of the Judge Advocate General's Department otherwise qualified lawyers. So far as the basic fundamental matters at whic the movement for court-martial reform has been aimed, little is accomplished b the Elston bill.

We have reviewed the history and background of these provisions to clear awa the confusion that has been created as a result of the enactment of the Elston bil We come now to our recommendations with respect to the position of command i the court-martial system.

We do not question that discipline is a proper concern of command, just as th commissions of crime in the civilian community is a concern of the executiv authority, represented by the district attorney and the governor. We believ that where a commanding officer has reason to believe that an individual has com mitted an offense, he must have the authority to file charges against that indi vidual and to order him tried by a court of competent jurisdiction, and to b responsible for the prosecution of the offense, such responsibility including desig nation of a qualified prosecutor. We believe that it should continue to be th prerogative of command to evaluate the seriousness of the crime, and determin whether the case shall go before a general court-martial, or a court with lesse powers of punishment. We further believe that, just as the civilian executive the commanding officer should have the power of clemency.

But once the judicial proceedings have been placed in motion, we agree with th opinion expressed by Hamilton in No. 78 of The Federalist that "There is no liber ty, if the power of judging be not separated from the legislative and executive powers."

We feel that, once the case has been referred by command for trial, the power and control of command must end, save for the right to exercise clemency. Accordingly, we recommend that (1) the power of appointing the court and the defense counsel must rest with the Judge Advocate General's Department; (2) that the personnel serving in such capacity must be free from the authority of command directly, or indirectly in matters of appointment, fitness reports, pro motions, leaves, etc.; and (3) that judicial review of court-martial proceedings shall be in higher echelons of the Judge Advocate General's Department.

A practical problem of major proportions arises with respect to these recom mendations. By law a Judge Advocate General's Department exists in the Regular Army, and the Judge Advocate General, as well as the other officers in

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e Department, are professional lawyers. Such is not the case in the naval vices or in the Air Force.

While there is a Judge Advocate General of the Navy, neither he not other icers performing legal duties are required to be lawyers. Traditionally, officers igned to legal duties in the naval services are line officers whose tour of duty the Judge Advocate General's office generally comes between other assignments. If there is to be a real system of military or naval justice, it must be administered hin each of the services by a corps of legal specialists from whom each Judge vocate General shall be required to be appointed, and which will provide the members of the courts, the prosecutors, and the defense counsel, all of whom ght to be trained lawyers. Such a corps is already established by law in the my, but it has never existed in the Navy and the Air Force, since its division m the Army, has followed Navy practice in this regard.

Establishment of such a specialist corps in the Navy and in the Air Force is t such a departure from precedent as might be imagined. While the legal tems of those services are today administered by officers who, notwithstanding ir distinguished records and high professional competence as line officers and iators, are generally not trained and experienced in the technical duties assigned m. other specialist functions are performed only by specialists. The Bureau Medicine and Surgery of the Navy and the Office of the Air Surgeon General manned and headed by physicians and surgeons, who may not be so appointed hout a civilian license, and whose life work lies in medicine. The Dental Corps the services are composed of dentists, and the Chaplains Corps are headed and nned by ordained ministers. There are doctors, dentists, and chaplains who major generals, rear admirals, and are accepted as an integral part of the vice without ever having commanded a regiment or a naval vessel. In addi-n, as the result of the specialization which comes from modern warfare, in all vices there are specialists such as communicators who are trained throughout ir careers for a particular specialty. Only in the specialties of law and of elligence has there been some hesitancy in providing for a specialist corps. ose two specialties have been largely considered as part-time jobs to which ior officers, regardless of their lack of professional training as lawyers or intel-ence experts, may be assigned for a brief tour of duty, to return to sea or to craft after a few years.

The Navy has never seen fit to establish a legal corps although in recent years has taken tentative steps in this direction. During wartime it had a group of serve officers classified as legal specialists. Commendably, since the end of orld War II it has sent a selected group of Regular naval officers to first-line schools for legal education, and has made such officers the nucleus of its post-ar legal program.

If the Navy's hesitation to create such a legal corps stems from a desire, with ich we could concur, to have its legal officers deeply imbued with its traditions d needs, the obstacle is not insurmountable. We would endorse a program ich would insure that the Navy's lawyers have duty with fleet units, and be as gnizant of and sympathetic with the problems and requirements of the service its general-duty officers. Such has, in fact, been the history of medical officers, aplains, and other specialists. We can see no reason why such a program would t be practicable with respect to legal specialists. But we are firmly convinced the necessity in all services of having billets concerned with legal duties filled trained and competent personnel. If there is to be any uniformity in the urts-martial systems of the various services, the professional lawyers of the my must be balanced by professional opposite numbers in the Navy and in e Air Force. Accordingly, we recommend that amendments to the law be opted providing for a truly independent legal corps within each of the services. e chiefs of such corps should be appointed from the corps, and not, as at present, om general-duty officers. The assignments, leaves, promotions, and fitness ports of officers in such corps should emanate from their superiors within the rps, and the decisions of the courts on which they sit should be reviewed by gher echelons within the corps and not by command. To our mind, such ovision is the basic need of military and naval justice. Once it is accomplished, ther reforms become mere refinements.

The Elston bill largely restricts its application to general courts martial, and ot special courts, which are the Army equivalent to summary courts martial in e Navy. It is our experience that the greater part of the abuses which have curred in military and naval justice have occurred in Navy summary and Army ecial courts, rather than in general courts martial. This is so because the com-anding officer who has convened the summary or special court does so not

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because he has any doubt as to the guilt of the accused, but because he feels that he cannot impose a sufficiently severe punishment at mast or company punishment. Frequently, this is conveyed to the court which the commanding officer appoints from his own command and whose decision he reviews. Too often the court is told that it is expected to find a verdict of guilty, and to impose a particular sentence, regardless of the oath that it takes "to well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and your own conscience." The result is that, although the court is by statute required to enter upon its duties with an open mind as to the guilt of the accused, its judgment is foreclosed in advance, and there is little question as to the ultimate result. This is much less likely to happen in a general court-martial, which is not ordinarily convened by the commanding officer who has instituted the proceedings and is not subject to his control. General courts martial are normally under the control of a general or flag officer senior to the commanding officer who has initiated the proceedings and the officers at his headquarters who participate in the proceeding are unlikely to be affected by the views of the subordinate commander who has recommended the court.

We are strongly of the opinion that all that we have said before as to the necessity of independent, competent lawyers serving as law members, prosecutors, and defense counsel on general courts martial is equally as applicable to Navy summary and Army special courts martial. Those who oppose this find it particularly impracticable in the Navy, where commanding officers of smaller units and ships have the power to convene summary courts martial. Actually, however, a large percentage of such courts are convened on larger vessels such as battleships, cruisers, and aircraft carriers (all of which have several thousand personnel aboard) and on bases where there are many thousands of men. In such ships and on such bases there should be no difficulty about providing adequate legal specialists just as other specialist officers are provided in the allowance list.

At first blush, it sounds convincing that smaller vessels such as landing craft, minesweepers, destroyers, and other vessels which may have no more than half a dozen officers aboard cannot provide and cannot justify such legal specialists. If such smaller craft normally travelled alone, that might well be so. Normally, however, they travel and function in squadrons and divisions, each of which has a flagship aboard which is a squadron commander with a staff duplicating the staff of a fleet commander in miniature. There is no reason why legal specialists cannot be attached to such staffs as are other specialists, and be available for duties in all units of the squadron. We believe that any reform of military and naval justice will be incomplete if it is not applicable to the inferior courts, as well as to the general courts, to the fullest extent practicable.

In the development of a uniform code for all the services, we recommend that a uniform terminology be adopted. Only confusion results from the fact that an Army special court is known to the Navy as a summary court-martial; that an Army trail judge advocate may find as his opposite number a recorder. Adoption of a common terminology will do much toward the development of a uniform approach. Similarly, we recommend that uniform definitions of offenses, and a uniform system of punishments be adopted which will be applicable to all the services.

The Elston bill, in section 210, has made it possible to discipline an officer who has committed an offense by trying him at a special court martial, as well as at a general court martial. This is not as yet true in the Navy where the only punishment that can be meted out to an officer is trial by a general court-martial or a private reprimand from his commanding officer. The effect of this is that where an officer commits a minor offense, he in effect goes unpunished, although an enlisted man committing the same offense is subjected to punishment. Similarly, in the Navy as an administrative measure courts martial are cautioned against confining a petty officer, although a seaman committing an identical offense may and frequently does receive punishment of confinement. We believe that these practices negative our basic concept of "equal justice under law", and we recommend that the law be amended so as to equalize punishments for all service personnel. Such a provision would improve morale and discipline.

The Elston bill has set up a comprehensive and tortuous system of review insofar as Army courts martial are concerned. That system is defective in that it preserves the right of review as to all phases of the case in the commanding officer who convened the court. This is completely at odds with American concepts of justice.

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We recommend that a uniform system of review be established within all of the services, under which the commanding officer shall retain the right to review the case only for the purposes of exercising clemency. This, of course, parallels our civilian procedures under which the right of clemency is exercised by the President in Federal offenses, and by the governor in State offenses. The initial review of the case as to legality and as to all aspects other than clemency should vest in the theater area or fleet representative of the Judge Advocate General. Thereafter, further review should be had by a board of review established in the office of the Judge Advocate General and appointed by him, as provided in the Elston bill.

Under present practice, in none of the services do the accused or his counsel participate as a matter of right in review of courts-martial decisions. They rarely file briefs, and rarely do they have an opportunity to argue their case on review. They have no knowledge of the questions that are being raised and discussed by the reviewing officers, and have no opportunity of presenting their point of view.

We recommend that the record of proceedings in any court martial shall include, when forwarded for review, a summary of all objections prepared by defense counsel, and that defense counsel be permitted to submit briefs or other argument to the reviewing authority. If the accused desires, at his own expense, to present oral argument through civilian counsel to the reviewing authority, he should be permitted to do so.

The goal of a uniform code uniformly applied and interpreted in all of the services is obviously difficult of achievement without some top level coordinating agency. Ideally, when real unification of the military services is finally accomplished, there should be a single Judge Advocate General performing all legal duties for the Army, Navy, Air Force, Marine Corps, and Coast Guard. Unification as provided in the National Defense Act falls far short of the unification under which such ideal can be realized. We must gear our recommendations accordingly to the existing situation, and to the advances that are realistically possible.

Accordingly, we recommend that there be established a board of review in the office of the Secretary of Defense, which shall have final power of review in all court-martial cases in all the services, and which will be charged with the development of uniform practices and procedures, much as the Supreme Court of the United States controls the decisions of the Federal courts of appeals. The Secretary of Defense should have the further duty of closely supervising the operations of the various Judge Advocate General Departments, and should have the power of recommending legislation to the Congress and of issuing directives to the services in matters pertaining to military and naval justice. He should have the specific responsibility of advancing unification of the legal functions of the armed services.

Today our country has for the first time a peacetime draft. Large numbers of our young men will in the years ahead serve in a peacetime Army, Navy and Air Force whose mission is the preservation of our American democracy. Under such circumstances it seems to us that there is a paramount obligation to those young men, to their anxious families, and to the basic principles of that American democracy to make full provision for the protection of those young men and to insure that their right to fair trials before qualified and independent courts is not impaired. We have every confidence that the adoption of the proposals made by us will strengthen the morale and discipline of our armed services, in time of war as well as in peacetime.

Respectfully submitted.

RICHARD H. WELS, *Chairman*,
LOUIS C. FIELAND,
JOHN M. MURTAGH,
SIDNEY A. WOLFF,
INZER B. WYATT,

The bill now before you represents a long step forward in court-martial reform. That the representatives of the three services have been able to agree on a uniform code of procedure, on uniform terminology, and uniform substantive laws is an accomplishment which few thought could be brought about.

No one should underestimate the difficulties of that task, and the patient effort required to bring it about. It invites the hope that some day the ultimate objective of a single Judge Advocate General's

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Office, servicing all of the armed forces out of the office of the Secretary of Defense, will be realized.

We like many things about this bill. Our criticisms are not directed so much at what it does, as at what it does not do. Frankly, we are going to play Oliver Twist and ask for "more."

When Professor Morgan invited our views as to what ought to be in the model courts-martial bill which was being drafted, we told him that the basic reform without which there would be no such thing as real courts-martial reform, or in fact real courts martial, was the elimination of the domination and control of courts martial by command.

The phrase "command control" is vague and indefinite to those not close to the picture. Let me explain what we mean by it. Under the existing system the same commanding officer is empowered to accuse the defendant, to draft and direct the charges against him, to select the prosecutor and defense counsel from officers under his command, to choose the members of the court from his command, to review and alter the court's decision, and to change any sentence imposed.

Although the military and naval courts take oaths "to well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and your own conscience" those courts have too often been told by the commanding officer who appointed them that when he ordered a court, it meant that he had concluded the man was guilty, but that he could not impose a sufficient punishment himself.

Too often the courts have been told that they were expected to bring in verdicts of guilty, and impose specific sentences—and told that even before they had heard the testimony of the witnesses.

That is command control. And the control is exercised by reason of the fact that the participants in the courts—the judges, the prosecutors, and the defense counsel—are subject to the full command of the officers who appointed them, and that their service careers are in his hands.

If you will read the press release issued by Secretary Forrestal's office when this bill was introduced, you will see the statement there that under this bill all of these powers which add up to command control are retained. The commanding officer still appoints the Officers under his command to serve as judges and as prosecutors.

He still reviews their decisions, and he has complete power to influence their decisions by the fact that he controls their promotions, assignments, leaves, and fitness reports. There is no question that this bill retains command control in all of its ugly aspects.

We are not alone in urging the elimination of command control and the creation of truly independent courts within the services. Every board and committee appointed by the War and Navy Departments has made this same recommendation, including the famous committee headed by Chief Justice Arthur T. Vanderbilt, of New Jersey.

The American Bar Association has made it. Veterans groups have made it. The recommendation comes from all of those concerned with our democratic way of life, who feel that it is not too much to ask that the citizen army of a democracy be given that fundamental fair play and assurance of justice which our country is trying to give to the rest of the world.

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It is ironic that those who are being subjected to a peacetime draft for the first time in American history themselves are not given the basic rights which our Government seeks to give the rest of the world through their service.

I should like to emphasize that we are as much concerned about the maintenance of discipline in the armed forces as are those who seek to retain command control.

We believe that discipline is dependent in a large degree upon the morale of the men who make up the services, and we do not believe that there can be good morale when men feel that the service courts which are set up to do them justice are not real and fair courts as we think of them here in America.

There is little difference between an Army court which has been influenced by its commanding officer and the Budapest tribunal which recently convicted Cardinal Mindszenty.

We feel that the commanding officer must and should be able to place a man on trial and control and direct the prosecution. But the judicial machinery itself must be in the hands of an independent judicial system within the services which, not subject to pressure and influence from command, will insure the accused the same fair trial by competent personnel that he would receive in our criminal courts were he a civilian.

This can be accomplished by including in this bill the recommendations of the Vanderbilt Committee for the creation of independent Judge Advocate General's Departments within the services which will operate the courts of the services.

It is interesting to note that Great Britain, from which our own systems of military and naval justice derive, has itself effected this reform, and that in England today the Judge Advocate General is now appointed by the Lord Chancelor, who is England's chief judge.

It ought to be noted that this reform in Great Britain was not the work of a Socialist government, but was the recommendation of the Lewis Committee, composed of leading judges and generals.

If the power of appointing the court and defense counsel is to rest with the Judge Advocate General's Department, as we propose, and if the judicial review of courts martial is to be in the higher echelons of the Judge Advocate General's Department, this presupposes that there will be in each Department an independent Judge Advocate General's corps free of the control of command in matters of promotion, assignment, leaves, fitness reports, etc.

Such a professional corps already exists in the Army. It never has existed in the Navy, where line officers have been assigned legal duties. The Air Force has sponsored a bill already introduced which would exempt it from the necessity of having such a corps.

Establishment of such corps is not the departure from precedent that we are led to believe. It would be no different than the Medical Corps, the Dental Corps, the Chaplain Corps, and the Engineers Corps which have existed for many years and without criticism.

We believe that matters affecting the lives and liberties of millions of men are sufficiently important to require the services of specialist officers. Failure to create such corps in the Navy and Air Force will itself frustrate the purposes of the bill before you, since this uniform code cannot receive uniform application when it is administered by

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trained specialists in the Army, and by nonspecialist officers in the Navy and the Air Force.

I should now like to address myself to specific provisions of the bill before you.

One of the admirable provisions of the bill is article 67, which creates a Judicial Council whose members shall be appointed by the President from civilian life and who shall receive the same salary as judges of the United States Court of Appeals.

Such Judicial Council is to be the final reviewing authority of courts martial. The provision for such a Judicial Council is a forward-looking step, and will do much to remove the confusion that now surrounds reviews.

However, the language of the section is in itself confusing. It does not specify how many members of the Council there shall be. It does not indicate whether they shall be appointed by the President alone, or by and with the advice and consent of the Senate. It does not say whether they shall serve for life, for a tenure of years, or at the pleasure of the President.

We believe that if the members of the Judicial Council are to have the pay and status of the judges of the court of appeals, they should be appointed in the same manner and under the same conditions as such judges.

We recommend that a specific number of members of the Judicial Council shall be provided for, and that they shall be appointed with Senate confirmation for life and good behavior.

Also with reference to the review provisions of the bill, article 66 (c) provides that within 10 days after any decision by a board of review, the Judge Advocate General may refer the case for reconsideration to the same or another board of review.

We believe that this provision destroys the independence and integrity of boards of review, and that it should be stricken. There is ample provison for review by the Judicial Council of the board of review's decision.

Article 2 (11) of the bill has by its language what I am sure must be an unintentional impact upon the civil liberties of the civil populations of Guam, American Samoa, and the trust territory of the Pacific.

At the present time the civil populations of those American Territories are under the supervision of the Navy Department. On June 19, 1947, the President sent a special message to the Congress—Eightieth Congress, first session, Document No. 333—in which he advised the Congress that the State, War, Navy, and Interior Departments had jointly recommended the enactment of legislation to grant citizenship, a bill of rights, and civil government to the people of Guam and American Samoa. In that message the President requested the enactment of such legislation.

While such legislation has not yet been enacted, it is inconceivable that the same Departments which made that recommendation should now recommend contrary legislation which, instead of making the peoples of our American colonies the possessors of the basic civil rights, would subject them to trial by Army and Navy courts martial.

The language of article 2 (11) should be revised so as to except from the persons subject to the jurisdiction of courts martial the civil populations of Guam, American Samoa, and the trust territory.

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Article 55 of the bill prohibits the imposition of any cruel and unusual punishments. We feel that the spirit of this section is violated by article 15 (a) (2) (f) which permits the commanding officer himself to impose upon an enlisted person in any of the armed services confinement on bread and water for 5 days.

At the present time such punishment cannot be inflicted by any civil court, or, indeed, by any court in the Army or Air Force. It may only be imposed by a naval officer. It is our considered judgment that the extension of bread and water punishment to all the services open the doors wide to future Litchfields.

Such punishment to our minds seems cruel and barbaric, and to fit in the same category as the floggings, brandings, and tattooings which are specifically prohibited by article 55. Such punishments, when imposed by the Japanese and the Germans in World War II met with the highest condemnation of the American people.

They will meet with the same condemnation when imposed by American officers on American men. We understand that the retention of such punishment has been requested by the Navy Department on the ground that merely confining a man at sea is no punishment, since it operates merely to free him from the performance of his duties.

Other punishments are available, however. At the very least, this section should be limited so that a man may be confined on bread and water only while he is at sea.

Article 28 provides that a reporter at a court martial shall make a record of the proceedings of the testimony before the court. Under present procedure, the reporter does not make a record of the opening and closing arguments of counsel. We feel that such arguments should be recorded, and that the bill should so provide.

This is important since, in the review of courts martial, trial counsel are not normally afforded an opportunity to present their views to the reviewing authority. Only by a reading of their arguments can their views and theories be made known.

Mr. ELSTON. Can I interpose right there? You do not make the opening statements of counsel in a civil case a matter of record?

Mr. WELS. No, Mr. Elston. But in civil cases, where the case goes up on appeal, counsel is present to present his case and his theory to the court, whereas in your courts martial the record comes to the reviewing authority without having briefs of counsel.

This is intended to be the vehicle through which counsel presents his theories as he would normally on personal experience and by brief in the civil court.

Mr. ELSTON. Briefs are provided for in this bill and counsel is afforded the accused at any time either in trial before the courts martial or on appeal. So the situation in that respect is the same as in civil courts.

Mr. WELS. Yes; but counsel on an appeal may very well be assigned from the Department, maybe from within the Judge Advocate General's Office, and this is intended to give him the benefit of the theory and the argument the trial counsel had since he frequently may not be the same person.

Article 37 prohibits commanding officers from attempting to influence courts martial. This provision flows from Article of War 88, as embodied in the Elston bill. The latitude which is directly given

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to command to interfere in the business of courts martial even under this provision is demonstrated by article 87 of the new Army Court-Martial Manual, which provides that:

> A commanding officer may, through his staff judge advocate or otherwise, give general instruction to a court martial which he has appointed, preferably before any cases have been referred to it for trial. Such instruction may relate to the rules of evidence, burden of proof, and presumption of innocence, and may include information as to the state of discipline in the command, as to the prevalence of offenses which have impaired efficiency and discipline, and of command measures which have been taken to prevent offenses. Such instructions may also present the views of the Department of the Army as to what are regarded as appropriate sentences for designated classes of offenses. The commander may not, however, directly or indirectly give instruction to or otherwise unlawfully influence a court as to its future action in a particular case.

It is our view that this article, although we support its purpose, is ineffective to accomplish that purpose. We believe that the inherent powers of commanding officers are such that, if they desire to manifest their displeasure at the manner in which members of a court appointed by them have handled a case, they can readily do so through the exercise of administrative discretion without furnishing any overt proof of a violation of article 37 by them. This article is ineffective in the case of a commanding officer who desires to influence or dominate a court.

Article 54(c) should specifically provide that, in addition to a copy of the record of the proceedings, the accused shall be furnished with copies of all documentary exhibits.

Article 88 provides that any officer who uses disrespectful language concerning the President, Vice President, Members of Congress and of the Cabinet, Governor, and members of State and territorial legislatures shall be subject to court-martial action.

In view of the recent case of Captain Dierdorfer on the West Coast, and general public reaction to the punishment awarded that officer, it is our view that careful consideration should be given this section, and that it should be safeguarded against the political martyrdom of service personnel.

Articles 118 and 120 make drastic revision in certain present practices. At the present time military personnel who are charged with murder and rape committed in the continental United States during peacetime are tried by civilian courts. These new articles would make such offenses punishable by general court martial.

Such offenses are serious crimes. Their prosecution and punishment in peacetime should not be taken away from the civilian authorities and entrusted to the services until adequate specialist corps have been established in all of the services which can assure that they will receive adequate, competent disposition.

I should like to conclude with a few remarks about special courts martial, the three-man courts provided for in article 16. These correspond to the present summary courts martial in the Navy, and special courts martial in the Army.

It has been my experience—and that of most other Reserve officers—that the principal abuses in courts martial occurred in such courts, which were invariably appointed by the commanding officer of the ship or unit in which the offense occurred. Such officers, who had close connection with the personalities and problems involved, have a greater concern with the outcome of a case than does the

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officer with general court martial authority, who is usually on a higher echelon. The bulk of the cases in which command exercised its influence over the courts occurred in such cases.

Such special courts have far-reaching powers. They are, for instance, authorized by article 19 of the present bill to award bad-conduct discharges. All of you are familiar with the fact that a bad-conduct discharge can cripple a man's life, and do him irreparable damage.

This was pointed out by Congressman Doyle a few moments ago.

Yet a great many of the safeguards which this bill throws around general courts-martial are not available in special courts. Thus, law officers are not required on special courts, and both the prosecutor and defense counsel may be persons without legal training.

I can envisage situations where it is not practicable to furnish such safeguards in special courts, but I think that in the great majority of cases they can be made available. Certainly if they are not, the special court should not be able to award a bad-conduct discharge.

We recommend that your committee revise the language of the bill so as to require the furnishing of all safeguards in special courts wherever practicable, and to require a certificate from the commanding officer setting forth the reasons why it was not practicable to furnish them in such cases where they were not.

In conclusion, I should like to state that the bill before you, while not the ideal measure for which we have striven, is a large improvement upon the existing system. Amendments of the character which have been suggested will make it a good bill, and will give to our citizen Army, Navy, and Air Force, and their families, the assurance that they are receiving the full benefits of that American way of life for which they are willingly risking their lives.

Mr. BROOKS. Thank you very much, Mr. Wells.

Mr. BROOKS. Are there any questions to be asked of the witness?

Mr. ANDERSON. I would like to ask Lieutenant Wels—glad to see you again—a question about this bread-and-water provision.

Mr. WELS. Yes, sir.

Mr. ANDERSON. On page 4 you say: "Other punishments are available, however," but you fail to specify what they are.

Mr. WELS. The bill specifically provides other punishments that may be imposed by the commanding officers at mast or at company punishment. It permits him to confine them without bread and water—just ordinary imprisonment.

Mr. ANDERSON. You mean starve them?

Mr. WELS. No, to confine him on full rations. I am just looking for that section number.

Mr. SMART. Article 15 is the article to which you are referring.

Mr. ANDERSON. If what you had in mind there is in the bill, all right. I just wanted to know what you had in mind by your statement——

Mr. WELS. What I had in mind is provided for in the bill.

Mr. ANDERSON. I thought you said: "At the very least, this section should be limited so that a man may be confined on bread and water only while he is at sea."

Mr. WELS. Yes. I think that would be a fair amendment, sir.

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Mr. ANDERSON. One other thing here. In referring to article 88, which provides that any officer who uses disrespectful language, and so forth—do you think that ought to be reversed?

Mr. WELS. No.

Mr. ANDERSON. I mean, if the President uses disrespectful language?

Mr. BROOKS. Well——

Mr. ANDERSON. We will take that off the record.

Mr. BROOKS. Any further questions?

We thank you very much——

Mr. RIVERS. It so happens that the President was right when he made that statement.

Mr. WELS. I do not think he was talking about anybody in the service.

Mr. BROOKS. We will not go into that at all.

The next witness is Mr. Arthur Farmer, chairman of the committee on military law of the War Veterans Bar Association.

Mr. Farmer.

STATEMENT BY ARTHUR E. FARMER, CHAIRMAN, COMMITTEE ON MILITARY LAW OF THE WAR VETERANS BAR ASSOCIATION

Mr. FARMER. Mr. Chairman and members of the committee, I am frankly not going to cover everything or nearly everything I have in my statement.

(The prepared statement follows:)

PREPARED STATEMENT OF ARTHUR E. FARMER, CHAIRMAN, COMMITTEE ON MILITARY LAW OF THE WAR VETERANS BAR ASSOCIATION, FOR PRESENTATION TO SUBCOMMITTEE NO. 1, HOUSE COMMITTEE ON ARMED SERVICES

Consideration of H. R. 2498 compels the conclusion that this uniform code of military justice is an outstanding work of codification, simplification and correction of the Articles of War and the articles for the Government of the Navy. Many loopholes that were left in the army court-martial system by the provisions of the Elston Act have been closed in the code, and the establishment of a single system of courts-martial for all the services fills a long-felt want. The modification of the duties of the present law member of a general court-martial, so as to make him in effect the judge and the other members of the court the jury for the purpose of arriving at findings with respect to the charges and specifications, is greatly to be commended.

The revised provisions for review of records of trial set forth in part IX of the uniform code are especially salutary (with a single exception that will be noted later in this statement) in two respects: (a) they greatly simplify the provisions of A. W. 50½; and (b) the creation of a judicial council consisting of properly qualified laymen who will have the status of judges of the United States courts of appeal, is a tremendous advancement not only in the proper functioning of the court-martial system, but also toward the gaining of military and public confidence in the workings of the services' courts.

It would be possible to commend the uniform code in many other respects and the greatest credit is due to its framers for their work of codification. The difficulty, however, is that the basic reform which the court-martial system requires and without which no real reform is possible—the elimination of command control from the courts—is conspicuously missing. Under the uniform code the commanding general will still appoint the members of the court, the trial counsel and the defense counsel from members of his command, and will review the findings and sentence. We will still have the same old story of a court and counsel, all of whom are dependent upon the appointing and reviewing authority for their efficiency ratings, their promotions, their duties, and their leaves.

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The provisions of article 37 which prohibit the censure of the court and counsel and any attempt to coerce the court's actions, will be valueless in a situation where the commanding general desires to circumvent them. It is naive to suppose that it will be necessary for the commanding general to use such direct means of influencing the court that they could form the basis for prosecution under article 37. And no one who served in any branch of the armed forces would underestimate the difficulty of obtaining an accuser of the commanding general, or a trial of the charges if an accuser could be found. The only method of making effective the prohibitions of article 37 is to remove from command the power to influence the court.

It cannot be emphasized too strongly that practically every committee which has studied the subject has made the removal of command control the sine qua non of effective court-martial control. The War Department Advisory Committee on Military Justice made the checking of command control its primary recommendation. Its conclusion, after having heard the Secretary of War, the Army's Chief of Staff, the Judge Advocate General of the Army, and scores of other high officials and ranking officers, after having taken testimony in regional public hearings in 10 of the largest cities in the United States, and after having digested the contents of hundreds of letters and answers to its mimeographed questionnaires, was as follows (report, pp. 6–7):

"The committee is convinced that in many instances the commanding officer who selected the members of the courts made a deliberate attempt to influence their decisions. It is not suggested that all commanders adopted this practice but its prevalence was not denied and indeed in some instances was freely admitted. The close association between the commanding general, the staff judge advocate, and the officers of his division made it easy for the members of the court to acquaint themselves with the views of the commanding officer. Ordinarily in the last war a general court was appointed by the major general of a division from the officers in his command, and in due course their judgment was reviewed by him. Not infrequently the members of the court were given to understand that in case of a conviction they should impose the maximum sentence provided in the statute so that the general, who had no power to increase a sentence, might fix it to suit his own ideas. * * *

"Indeed, the general attitude is expressed by the maxim that discipline is a function of command. Undoubtedly there was in many instances an honest conviction that since the appointing authority was responsible for the welfare and lives of his men, he also had the power to punish them and consequently the courts appointed by him should carry out his will. We think that this attitude is completely wrong and subversive of morale; and that it is necessary to take definite steps to guard against the break-down of the system at this point by making such action contrary to the Articles of War or regulations and by protecting the courts from the influence of the officers who authorize and conduct the prosecution."

In a poll conducted by the Judge Advocate's Association, a national organization comprising in its membership nearly 2,200 of some 2,700 lawyers who served as officers in the Judge Advocate General's Department during War II, 703 out of 774 members, replying to a questionnaire, advocated the total separation of the appointing and reviewing authority from command, with the power of the commanding officer limited to appointing the trial judge advocate and to referring the charges for trial. The resolutions of the House of Delegates of the American Bar Association, condemning the provisions of the Articles of War which effectuate command control and which are carried forward into the Uniform Code, are too familiar to the members of this committee to require quotation, nor is the fact that practically every other bar association and veterans' organization, as well as the Navy's own Keeffe Board, has taken a strong position against the perpetuation of such powers in the commanding officer, new to the members of this committee.

It would seem proper, however, to refer to two cases in the Federal courts which were referred to in an article written by George A. Spiegelberg, Esq., chairman of the special committee on military justice of the American Bar Association, in the January 1949 issue of that association's journal. The first is *Shapiro* v. *United States* (69 F. Supp. 205), and the second is *Beets* v. *Hunter* (75 F. Supp. 825). Without going into the facts which brought forth these acid comments made by Federal judges—and which certainly merited the comments—the following is taken from the court's opinion in the Shapiro case:

"A more flagrant case of military despotism would be hard to imagine. It was the verdict of a supposedly impartial judicial tribunal; but it was evidently

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rendered in spite against a junior officer who had dared to demonstrate the fallibility of the judgment of his superior officers on the court—who had, indeed, made them look ridiculous. It was a case of almost complete denial of plaintiff's constitutional rights. It brings great discredit upon the administration of military justice."

And in *Beets* v. *Hunter*, Circuit Judge Murrah said:

"The trial of this case in the eyes of both the prosecution and the defense was wholly obnoxious and repulsive to their fundamental sense of justice, and that is the test by which this court should judge it.

"The court has no difficulty in finding that the court which tried this man was saturated with tyranny; the compliance with the Articles of War and with military justice was an empty and farcical compliance only, and the court so finds from the facts and so holds as a matter of law.

"He (the accused) could not have received due process of law in a trial in a court before men whose judgments did not belong to them, who had not the will nor the power to pass freely upon the guilt or innocense of this petitioner's offense, the offense for which he was charged."

No system which permits the possibility of trials which deservedly bring forth such judicial criticism can properly be termed a system of justice—military or otherwise.

The remedy is simple and was first succinctly stated by Secretary Patterson's War Department advisory committee on military justice. That it bore in mind the necessity of preserving the disciplinary authority of command is explicit in its statement. The committee said (report, p. 9):

"The need to preserve the disciplinary authority of the command and at the same time to protect the independence of the court can be met in the following manner: The authority of the division or post commander to refer a charge for prompt trial to a court appointed by a judge advocate should be absolute. The commander should, of course, be furnished with a judge advocate to advise him with reference to the disposition of the charge. The right of the command to control the prosecution, and to name the trial judge advocate, who should be a trained lawyer, should be retained. The Judge Advocate General's Department, however, should become the appointing and reviewing authority independent of the command. For this purpose the present organization of the Judge Advocate General's Department may be sufficient and the power to select and review its judgment should normally rest with the staff judge advocate at Army level, so that the members of the court may be selected from a wider area and the perennial problem of disparity of sentences in similar cases may be at least partially solved. It may be best in certain instances to place the authority on a higher level, or in case of war or in case of units established at a distance from the command, to delegate the authority to a division or smaller unit. We believe that the flexibility of such a system will aid in the solving of many problems and will permit the establishment of permanent courts or traveling courts if they be found desirable."

The changes recommended are neither drastic administratively nor difficult of accomplishment practically, however, revolutionary they may be in concept in the armed forces of the United States. They require only the substitution of the senior member of the Judge Advocate General's Department or senior legal specialist attached to a command, for the commanding officer as the convening authority. Each commanding general of a division or other proper unit will designate a panel of officers for court-martial duty. In the ordinary courts, the convening authority would appoint the court from the panel submitted by the commanding general of the division of which the accused is a member. But when that commanding general has shown any tendency to attempt to influence the members of the panel—even though it would be impossible to obtain a conviction under article 37, or if it were inexpedient to transfer or try the commaidnng general because of his military value—then the accused from that division would be tried by members of a panel from another division.

It is obvious that the problem would be more difficult in the naval forces, but the custom in the Navy has been for the Secretary of the Navy and the naval Judge Advocate General to retain largely the power to appoint its general courts martial, and it has not been customary for the commanding officers of units of the fleet to appoint such courts. In the normal case, therefore, it is apparent that it would be quite practicable for the senior legal specialist attached to the staff of the commander in chief of a fleet, or the commanding officer of a naval station or larger shore activity of the Navy beyond the continental limits of the United States (Uniform Code, art. 22) to convene a court with no greater diffi-

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culty than the commander in chief of the fleet or the commanding officer of the naval station would have experienced in so doing. The provisions of subdivisions (6) and (7) of article 22 giving convening authority to other commanding officers on lower levels may be continued by substituting for these commanding officers the senior member of the Judge Advocate General's Corps or the senior legal specialist attached to their staff.

It is quite possible that a situation may arise in the Navy where no legal specialist will be available. In such instances, a legal specialist could be temporarily attached to the staff of the command. A court which has the power to impose a sentence of death, of life imprisonment, or of bad-conduct or dishonorable discharge (which carry with them permanent disgrace and impairment of earning power in civilian life), should not be so appointed as to permit of any possible reflection upon its impartiality and independence merely because it would be inconvenient to attach, temporarily, a legal specialist to a lower echelon of one of the services.

The senior member of the Judge Advocate General's Corps, or the senior legal specialist, having been designated as the convening authority, the same powers of review should be exercised by them as are exercised by the commanding officer as convening authority under the proposed uniform code. Before the record is forwarded to the convening authority for review, however, it should be passed upon by the commanding officer who in the uniform code is designated as convening authority, for the exercise of clemency. His endorsement would limit the power of the reviewing authorities with respect to approval of the sentence.

In addition to this primary revision in the method of appointing general courts and accomplishing the initial review of their findings and sentence, certain other important changes should be made in the uniform code. These will be discussed in the order of their appearance in the articles of the code.

1. Article 8 authorizes civil officers summarily to apprehend "a deserter from the armed forces of the United States." This article should be amended so as to authorize such officers to apprehend "a deserter or a person absent without leave from the armed forces of the United States." The heading of the article should be amended in like manner to read: "Apprehension of Deserters and Personnel Absent Without Leave".

2. Article 15 is concerned with the right of a commanding officer to impose nonjudicial punishment. In the Army an accused has the right, under the provisions of the Manual for Court Martial, to refuse such punishment and demand trail by a court cartial. In the Navy this is not true. When it is realized that a commanding officer may, under subdivision (a) (1) (C) impose upon an officer forfeiture of one-half pay per month for a period up to 3 months, and may in like manner reduce an enlisted man in grade or order him confined on bread and water for 5 days, the injustice of such a provision is apparent. Whether or not the imposition of punishment of such severity, without a right to trial, has been sanctified by custom in one branch of the service, it is still unjustifiable, and the fact that no such power is given to commanding officers in another branch of the service and discipline has been maintained despite the lack of such power, shows conclusively that the power is not necessary to the maintenance of discipline.

In any event, confinement on bread and water is a barbarous relic of earlier days and should be abolished, and if the commanding officer is to have power to impose nonjudicial punishment without affording his personnel an opportunity to demand trial by court martial, then he should not be permitted to impose forfeiture of one-half pay per month for more than 1 month, nor to reduce an enlisted man in grade. It is hereby earnestly recommended, however, that the nonjudicial punishments, with the exception of confinement on bread and water, be maintained as provided by the bill, but that the right to demand trial by court martial be written in.

Further, trial by court martial should be trial by a special or general court and not by the commanding officer's alter ego, the summary court officer. In order to effect the latter change, article 20 must be amended, as hereinafter set forth.

3. Article 19: Under the provisions of this article special courts martial may judge a bad-conduct discharge even though not a single member of the court or of counsel is trained in the law. It is certain that a bad-conduct discharge will be a stain on a man's record throughout life and will seriously affect both his opportunities to obtain employment and his chances for advancement. Such a stigma and the imposition of such a handicap should not be imposed unless a law officer shall sit as a member of the court to guide it in its reception of evidence and in the application of the relevant law. It is therefore strongly urged that article 19 be amended by adding the following language to the final sentence of article 19:

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"and unless a law officer, qualified as set forth in article 26 (a) hereof, shall be appointed to the court and shall be present throughout the trial."

4. Article 20: This article should be amended by adding to the first sentence the following words:

"nor shall he be brought to trial before a summary court martial in any event, unless he shall consent to trial by such court."

5. Article 32: Subdivision (b) of this article enumerates the matters of which the accused shall be advised in connection with the investigation of the charges preferred. It should be amended to include a provision that he must be advised of his right to be represented by counsel. To assume that the accused will be aware of this right without being specifically informed of it, would be most unrealistic and if the accused is to have the right to be represented by counsel, it should be made realistic by the change indicated. This change may be accomplished by rewording the first line of subdivision (b) as follows:

"The accused shall be advised of the charges against him and of his right to be represented by counsel * * *"

6. Article 52: Subdivision (c) of this article requires an amendment to eliminate a material source of confusion. This subdivision provides, among other things, as follows:

"A tie vote * * * on a question of the accused's sanity shall be a determination against the accused."

This section should be amended by stating specifically that the loss of a motion for a finding of not guilty based upon the accused's lack of sanity, shall not preclude a finding of not guilty because of the accused's lack of sanity, and that an accused may not be convicted where his sanity is in issue, except upon the concurrence of two-thirds of the members of the court present at the time the vote was taken as to the sanity of the accused.

7. Article 66: The framers of the uniform code have done an especially fine piece of work with respect to the system of review. Nevertheless, a most undesirable provision is embodied in subdivision (e) of article 66. This subdivision provides that within 10 days after any decision of a board of review, the Judge Advocate General may refer the case for reconsideration to the same or another board of review.

The decision of a board of review should be final and no more excuse exists for referring the same case to another board of review than for bringing before the Court of Appeals for the Second Circuit a case which has already been decided by the Court of Appeals for the First Circuit. Under the provisions of subdivision (b) (1) of article 67, the Judicial Council is required to review the record in all cases reviewed by a board of review which the Judge Advocate General orders forwarded to the Judicial Council for review. That provision gives to the Judge Advocate General the right to cause a review of a decision of a board of review in which he does not concur. Having the right to submit such a case to the Judicial Council, no reason exists why he should be able to peddle the case among other boards of review until he obtains the decision which he desires.

8. Article 67: Subdivision (c) of this article provides that the Judicial Council shall act upon a petition for review within 15 days of the receipt thereof. It seems likely that this period may be insufficient in many instances, and it is therefore suggested that the period should be enlarged to 30 days.

9. Article 69: In the interests of clarity, the first part of the second sentence of this article should be reworded as follows: "If any part of the findings or sentence is found incorrect in law or in fact * * *."

It is difficult to believe that in the case of a review by an officer in the office of the Judge Advocate General, the reviewing officer shall not have the power to weigh the evidence in like manner as the board of review and Judicial Council are now empowered. This should be made clear by the rewording indicated.

10. Article 70: In order to make subdivision (c) (3) of this article conform to the proposed amendment to subdivision (3) of article 66, it should be reworded as follows: "when the Judge Advocate General has transmitted a case to the Judicial Council."

While the uniform code will not accomplish the desired result of achieving a real system of justice in the courts of the armed services unless command control is eliminated in the manner indicated in this statement, it cannot be too strongly emphasized that the revisions of the present Articles of War and Articles for the Government of the Navy embodied in the code are essential parts of such a system. Each of them must be maintained, subject to the changes above set forth, in addition to the removal of command control, if real reform is to be accomplished.

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You will find, beginning on the bottom of page 7, a series of specific recommendations with respect to amendments of the articles. I do not think I should take the time to go into them. They are available for you. If I touch on them, it will not be in full.

I would like to first state what my experience has been, so you can judge for yourself as to the value of it. I served as an enlisted man in the Army, both in this country and in New Guinea, for 2 years.

I was returned to this country and went to Judge Advocate General's School. I was commissioned in the Judge Advocate General's School.

Mr. NORBLAD. At Ann Arbor?

Mr. FARMER. Yes, and served for a year as an assistant judge advocate in various camps throughout the South. Since the time I was separated from the service there has been no period in which I have not been at work on this particular question of court-martial reform.

Now I would like to say that my position is that this is a practical question. This is not a question merely of legality and of lawyers. The first thing an army has to do, I agree, or a navy, is to win a war and everything must be bent to that end.

So the question comes up: Are any reforms which are being advocated here likely to interfere with the prosecution of the war or the maintenance of discipline? If they are, they have to go.

Now, this code as a code, as far as it goes, is a perfectly splendid piece of work. It does safeguard the rights of the accused insofar as he will have adequate counsel. It does safeguard his rights insofar as he has a real, honest-to-goodness law officer who performs the functions of judge. It has a splendid system of review. And it has many other provisions which I am certainly in accord with.

It does not, however, as the other two gentlemen who preceded me said, remove the influence of command over the courts.

Now, if the influence of command over the courts is necessary for the maintenance of discipline and the winning of wars, then let us have it.

But I have yet to be given any facts which indicate that that is true. As a matter of fact, when the Vanderbilt committee which was appointed by Secretary of War Patterson had the question before him their conclusion was from the testimony which they got of commanding generals, the Secretary of War and various other officers including members of the Judge Advocate General's Department, that the true administration of justice was an aid to the winning of wars because with a failure of honest justice you had a falling off in morale.

There is always a question that I want to put to somebody who says, "We don't want to interfere with the courts, they must be independent." The officers of the court make the statement that they will render justice according to the dictates of their conscience and yet who say nevertheless command must keep control over these courts.

And the question is: For what purpose? "If you don't want to influence them, why should you insist on keeping that command influence?"

Now, what is the situation? Of course you have the same old story that was mentioned by Senator Norris when the Chamberlain bill was before the subcommittee in 1919. You have the commanding general who is in effect if not in law the prosecutor appointing the

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court, ordering the case to trial, appointing defense counsel, appointing the trial judge advocate—the prosecuting authority—and when they get all through with it, then initially reviewing the record.

Now, that is an intolerable situation because as a practical matter—no matter how many articles 37 you write forbidding coercion of the courts—so long as there are commanding generals who feel it is their duty to influence the courts because discipline requires it, they are going to find means to do so.

When I was down at Camp Gordon and it was done in one instance very beautifully by putting the officer under arrest by written order instead of the usual way which is by word of mouth.

The court could not have been more influenced if each and every officer was called before him and told, "Look, this man is guilty and make an example of him." In other instances, the way it is done very simply is that there is a heart-to-heart discussion between the general and his operations staff officer.

They discuss the seriousness of the offense, in the hearing of a couple of other officers, and the Army grapevine which functions so beautifully goes into action, and every member of the court knows about it.

In other instances what happens is that the general will call the president of the court in and he will say, "You have a series of very important cases and I want you to consider them most carefully because the entire discipline of the command depends on them."

Now, that could be taken to mean: I want them acquitted, but I do not think it would normally be because you do not call the president of the court for the purpose of saying you want him to be acquitted.

And yet, under article 37, you will not prove a blessed thing that anything improper had been done.

So the only way in which you can prevent command influence on the court is by taking it out of the power of the command to do it.

Now, this does not require any radical revision of the present system. It does require that having set up an independent Judge Advocate General's Department you put the power to appoint the courts and counsel and to conduct the initial review under that group.

Now, how can you do it? All that you have to do is to have the appointing authority and the senior judge advocate and the junior legal specialists attached to the next higher echelon than the one that is ordering the man to trial.

That does not mean that the commanding general or the commanding officer in the Navy loses the power to assign his officers. He will submit a panel of officers who are available for court-martial duty.

Today he simply designates those officers as a court. If the situation which I am making is carried forward, instead of designating that as the court, he will designate these officers as available for court duty.

Then the judge advocate at the next higher echelon will appoint from the panels that come to him from the various commands courts to sit and hear the case.

Now, that does not mean that if a man comes up for trial from the Twenty-second Division he necessarily must be tried by a court appointed from officers from the Fifth Division, or the One Hundredth Division. In the normal course, where your commanding officers keep their hands off the courts, there is no reason in the world why the accused cannot be tried by officers from his own command.

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And I would expect that in the normal course the judge advocate at the higher level would appoint a court consisting of officers from that very division.

But there will come cases where feeling runs high in a command, where perhaps there has been some invisible exercise of authority which results in disobedience by an inferior—whether it is an officer or an enlisted man—and it becomes a cause célèbre in that division.

There the authority is being challenged and, by golly, it is going to be vindicated by a conviction whether the man is guilty or not. That is the type of case in which the judge advocate at the higher level should have the power to order trial before a court consisting of officers from some other command.

There may also be instances where it is found that the commanding general is consistently trying to influence his courts. In those cases men should be tried before courts appointed from panels of officers from other divisions or other headquarters.

It may be that you have any number of situations that might come up where the ordinary and expected even-handed dispensation of justice is followed up.

Now, all that this is intended to do is to take care of those situations which are not now being taken care of. You cannot say that we are going to discipline or reprimand or remove a commanding general because he interferes with the court. The purpose of the Army is to win the war.

If you have a good fighting commanding general of a division you are not going to discipline him or destroy his effectiveness by repremanding him because he sticks his fingers into his courts in good faith.

But you do have to do something so that the men in his command do get a fair trial. And the only way you are going to do it is by taking that power away from him. Let him continue as a fighting officer, but also let the officers and men in his division have a fair trial.

Mr. RIVERS. In that connection, do you think it will be easy to incorporate that philosophy or that recommendation in this particular piece of legislation?

Mr. FARMER. Yes; I think it would be very easy, sir.

Mr. RIVERS. Very easy to put it in here. I have not gone into it fully, but I have heard the objection that maybe subsequent legislation should follow this recommended or advocated objective.

Mr. FARMER. Well, sir, the point is this: Here you have under part V—appointment and composition of courts martial——

Mr. RIVERS. Therefore you contend it is not hard to put it in this particular piece of legislation?

Mr. FARMER. No; it is not difficult at all. It can be done very simply.

Mr. RIVERS. All right.

Mr. FARMER. Now the objection to that that comes up is: How about your isolated commands? Well, it was taken care of in the last war. In the north African theater they had many isolated commands and many times where they had a company or separate detachment over somewhere they simply did not try them by a courts martial appointed out of that little bit of a group.

What they did was to have traveling teams. They had a three-man team: Law member, trial judge advocate, and defense counsel. And the command was large enough so that you could expect unprejudiced officers.

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They simply sent the team out, and the team tries those cases. Where the command was not large enough you took the accused, you took one of two witnesses—and unless it is a capital case you could take deposition—and you moved them, as was suggested here earlier, by plane to the nearest base and you tried them there.

And there was not any undue delay.

Mr. GAVIN. What were the results from those teams? What was the reaction from them? What kind of work did they do?

Mr. FARMER. Excellent work.

Mr. GAVIN. Excellent work. They were unprejudiced. They went in there and knew nothing except to take the case and handle them clearly, as they saw it.

Mr. FARMER. Yes; that is right. And the best testament to it was it was first started as an experiment and then it was continued and put into common usage. In fact, in this country, in the Sixth Service Command, sir, there was one group of general courts martial at headquarters of the Sixth Service Command.

And at every trial before a general courts martial the accused was brought from wherever he was in the Sixth Service Command to the headquarters to be tried by these independent courts, and they functioned beautifully.

Mr. RIVERS. Who was responsible for that directive creating these independent teams?

Mr. FARMER. That, sir, I cannot answer. But I think it was done in the first instance at the suggestion of the staff judge advocate attached to the north African theater.

Mr. RIVERS. The reason I ask: You recall last year we had opposition from the General Staff, whomever it was, opposing an independent Judge Advocate General. You remember that, sir?

Mr. FARMER. Yes, sir. This I must say, Congressman Rivers, was not a question of an independent Judge Advocate General's Department.

Mr. RIVERS. But——

Mr. FARMER. The way it worked out, it was.

Mr. RIVERS. That is what I am talking about.

Mr. FARMER. And that is one of the better things about moving the power of appointment to the higher echelons. When you get to the higher echelons, you do not have the officers putting their fingers in the court. You do have some independents.

But here, where you had testimony opposing it, I think you had your witnesses speak of those who functioned at the higher echelons and not people I have worked with as an enlisted man, working with a trial judge advocate that was not a lawyer, but who was trying cases when men were on trial for their lives and for manslaughter and for disobedience to orders.

It would mean working right down the division, or some place like Finchhaven where I was, to see how those things worked out.

Mr. BROOKS. You referred to a case where the members moved to the Sixth Service Command Headquarters.

Mr. FARMER. Yes, sir.

Mr. BROOKS. And the cases were tried there.

Mr. FARMER. Yes, sir.

Mr. BROOKS. What do you do about the witnesses?

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Mr. FARMER. In most cases, sir, in which an Army offense is involved there are two witnesses—at the most three witnesses.

Mr. BROOKS. Well, you have lots of crimes against the civilian population, where civilian witnesses are necessary.

Mr. FARMER. Where you have civilian witnesses, sir, it was necessary to have them travel from their homes to the place where the trial was being held. Time and time again, at Camp Gordon, we had to bring in civilian witnesses from Kentucky and other parts of Georgia because we had cases there of a statutory rape or an assault case which occurred when the man was AWOL.

Mr. GAVIN. Wherever the witnesses were, they could be brought back anyway.

Mr. FARMER. Certainly.

Mr. GAVIN. Without any difficulty.

Mr. BROOKS. You think that is better than bringing the court to the witnesses?

Mr. FARMER. I do not think, frankly, that makes much difference, whether you bring the court to the witnesses or the witnesses to the court. You still have to have some traveling involved and it is no harder one way than the other.

What I am pointing out here, sir, is that the availability of witnesses does not make impracticable the setting up of the courts under the system which I am suggesting. That does not present a problem.

Mr. ELSTON. As I understand it, you are pretty much satisfied with the provisions of the bill that we passed last year setting up a Judge Advocate General's Corps, except that you possibly feel that even that bill gave too much command influence?

Mr. FARMER. That bill was an excellent bill, sir, but it did not remove the power of command to influence the courts.

Mr. ELSTON. That is what I said. Except for that——

Mr. FARMER. Yes, sir.

Mr. ELSTON. The setting up of a separate Judge Advocate General's Corps as I understand your statement would meet most of your objections?

Mr. FARMER. It would not meet the objection to removal of command control because no matter how independent your Judge Advocate General's Department is, so long as command appoints the courts, the independence of the Judge Advocate General's Corps does not help them.

Mr. ELSTON. Well, with that exception.

Mr. FARMER. Yes, sir.

Mr. ELSTON. It would take care of the matter.

Mr. FARMER. Yes, sir.

Mr. ELSTON. That is the sum and substance of your whole statement.

Mr. FARMER. That is right, sir.

Mr. RIVERS. Let me get that, again. I want to be sure.

Mr. GAVIN. Me, too. I did not hear it.

Mr. RIVERS. As Mr. Elston said, if we were to provide that grant in this bill, that would meet a great deal of the objections which you now speak of as to the deficiencies of this bill?

Mr. FARMER. Congressman Rivers, you now have under the Elston Act an independent Judge Advocate General's Department. This

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bill does not touch on that. It does not either destroy it or do anything to it.

Mr. RIVERS. That is right.

Mr. FARMER. So we start with the assumption that we do have an independent Judge Advocate General's Corps.

Now the question is——

Mr. BROOKS. For the Army.

Mr. FARMER. For the Army?

Mr. BROOKS. Yes.

Mr. FARMER. Yes, sir.

I am addressing myself to the problem of the Army because it is correlative in the Navy.

Mr. BROOKS. All right.

Mr. FARMER. And the Air Force.

And there—I do not know—I leave it with you gentlemen whether that should be separate legislation or whether it should not be. It may be you are putting too much in one bill, if you try to accomplish that in one bite at this time.

Mr. RIVERS. That is what I asked you a while ago, and you said it would be simpler to put it in here.

Mr. FARMER. It would be simple to put in the new method of appointing the courts under article 22 and the subsequent sections.

Mr. RIVERS. Yes.

Mr. FARMER. You already have in the Army your independent Judge Advocate General.

Mr. RIVERS. I know that.

Mr. FARMER. And there the independent Judge Advocate General's Department would appoint the courts. In the Navy you do not have that separate corps, but you do have legal specialists who are attached to the staffs of commanders at various levels.

Now it would aid, even though you did not have an independent corps in the Navy and in the Air Force, if you had the power of appointment coming from the echelon above the one where the man is being tried. You still need an independent corps.

Mr. RIVERS. I see.

Mr. FARMER. But what I am pointing out here is if you have your courts appointed from the higher echelon you go a long way to removing command control.

Mr. PHILBIN. Do you have language that you suggest might be incorporated in the bill?

Mr. FARMER. I have not actually drafted language, sir. I have outlined in my statement the method by which it would be done, however.

Mr. PHILBIN. And where would you put it in?

Mr. FARMER. You would put it in in rewriting Part V—Appointment and Composition of Courts Martial.

Now I will add this that, as a practical matter, I think you would have to limit that type of appointment for the most part to general courts martial. But it is the general court which has the power of life and death over your accused and which has the power to give a dishonorable discharge to prejudice his whole life—to send him away for 40 or 50 years, as many of the courts did. It is that court which particularly must be safeguarded.

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Mr. GAVIN. Why limit it to that? Even it some simple cases there were some very severe sentences that were passed out.

Mr. FARMER. By the general courts?

Mr. GAVIN. Yes.

Mr. FARMER. Yes, sir; there is no question about it.

Mr. GAVIN. So why limit it to a general court?

Mr. FARMER. Well, your special court is a different proposition. The power of the special court to sentence is so limited that although I would like that to go to special court I realize the argument of the Army and the Navy that it is not always practicable to put the appointing authority in a higher echelon.

There, in your special courts, as you will see here, sir——

Mr. SMART. Article 21.

Mr. FARMER. In special courts: Adjudge any punishment except death, dishonorable discharge, dismissal, confinement in excess of 6 months, hard labor without confinement in excess of 3 months, and forefeiture of pay not exceeding two-thirds pay per month for 6 months.

So practically speaking, a special court cannot impose any confinement of more than 6 months.

And I do make a suggestion in my statement here that if the special court is to have the power to adjudge a bad-conduct-case charge, which certainly would prejudice any man in civilian life, that there the accused is entitled to the protection of a legal officer, that is a law officer, on that court. And only in such instances would it be necessary.

Mr. BROOKS. Mr. Farmer, Mr. Norblad would like to ask you some questions.

Mr. NORBLAD. Mr. Farmer, you were speaking of your experience in Judge Advocate General matters. I might say I defended in a number of courts martial during the war. I was judge advocate in a number of cases.

I was also a law member and a staff judge advocate in the Ninth Air Force. I also attended the same school at Ann Arbor that you did. I agree with you 100 percent in what you say.

I think your biggest abuse in the courts martial during the war was command influence. Now, in the Elston bill, under section 37, there was put in a prohibition against that.

Mr. FARMER. Yes, sir.

Mr. NORBLAD. As far as I can see, in the new Courts-Martial Manual that came out a couple of weeks ago, under article 87 I believe it is, the Army has just twisted it around to make a complete change from the intention of Congress. Do you agree with that?

Mr. FARMER. I agree perfectly with that.

What is more, under the Courts-Martial Manual, they completely emasculated article 11 which provided that if the trial counsel is a lawyer and qualified in the specific manner mentioned there, then the defense counsel must be.

Now, by putting in the manual, in paragraph 56, that that only applies to your defense counsel and not to the assistant defense counsel, they have completely vitiated that provision under the regulations they have promulgated which are supposed to implement the Elston Act.

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You have a situation, if the manual is to be followed, by which your trial counsel would be a lawyer and qualified. But your defense counsel actually defends the case. The assistant defense counsel does and he does not have to be so qualified.

So when you go to trial what do you have? You have a completely qualified prosecutor and a completely unqualified defense counsel.

Mr. NORBLAD. What is the reference to that, again?

Mr. FARMER. Paragraph 56, Manual for Courts Martial, 1949.

Mr. RIVERS. Of course, that is not surprising because they fought that proposal which we finally incorporated with everything they had in the book, if you remember.

Mr. FARMER. I remember that. That is why this bill must have everything in it and not leave anything, like waiving trial in lieu of nonjudicial punishment, to the services for interpretation.

The bill must be complete in itself. Otherwise it will be interpreted into nothing necessary. Like "if available" used to be in the old bill, where you had to have a member of the Judge Advocate General's Department if available as a law member.

Then the question was, When was he available? Under a recent decision of the Court of Appeals for the Second Circuit "if available" meant if militarily available and not if physically available. So in one case, the Hodges case, which was tried in the second circuit, you had the trial counsel who was a Judge Advocate General officer and the defense counsel was a Judge Advocate General officer, but the law member who was required to be one if available was declared not available.

There was not any Judge Advocate General officer available. So they went to bat without a Judge Advocate General officer as a law member.

Mr. BROOKS. Any more questions, gentlemen?

If not, we certainly thank you, Mr. Farmer, for a very fine statement.

Mr. FARMER. I thank the committee for its courtesy.

Mr. BROOKS. We have two more witnesses, do we not?

Mr. SMART. Yes, sir.

Mr. Chairman, I would like to announce for the benefit of the members of the committee, the remaining witnesses and the interested listeners here that the House will conduct no business today, so the committee is perfectly free to proceed with these remaining two witnesses, both of whom represent the American Legion.

Mr. ELSTON. There is a conference this afternoon, though.

Mr. BROOKS. There will be no business on the floor. However, some of the members have expressed themselves as interested in being present there due to the memorial service.

Mr. ELSTON. Are the witnesses from out of town?

Mr. SMART. Yes. We have one witness from Utah here.

Mr. TAYLOR. But if it pleases the committee, I will have the witnesses remain over and we can come before the committee tomorrow morning at 10 o'clock, if that suits your convenience.

Mr. ANDERSON. I think that would be excellent, Mr. Chairman.

Mr. TAYLOR. In fact, we would appreciate that very much, Mr. Chairman.

Mr. BROOKS. Which witness is that?

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Mr. TAYLOR. The one from Utah, and the other one who is right here. I have one witness dealing solely with the Army phase of it and the other dealing solely with the naval phase of it.

Mr. BROOKS. We have 20 minutes now, gentlemen, and we could proceed with the next witness and then adjourn at noon to go over to the floor and take up tomorrow morning at 10 o'clock.

If that is all right with the committtee and it is all right with you, we will proceed accordingly.

Mr. SMART. Which witness would you prefer to proceed with at this time?

Mr. TAYLOR. If you are going to adjourn promptly at 12—I notice it is now a quarter of—I would really like to keep them together because there is continuity——

Mr. BROOKS. That being the case, if there is no objection the committee will stand adjourned until tomorrow morning at 10 o'clock.

Mr. TAYLOR. Thank you very much, Mr. Chairman and gentlemen of the committee.

(Whereupon, at 11:45 a. m., the committee adjourned until Wednesday, March 9, 1949, at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

WEDNESDAY, MARCH 9, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The committee met at 10 a.m., Hon. Overton Brooks (chairman of Subcommittee No. 1) presiding.

Mr. BROOKS. Gentlemen, the committee will please come to order.

I might say this morning we have these CBS microphones. The entire proceeding in the committee, as I understand, will be recorded, but the idea is that high lights in the testimony will be canned, so to speak, for use at some future time.

So I suggest, gentlemen, that you frame your questions accordingly, with the knowledge that they may later go on out over the air.

Mr. ANDERSON. Mr. Chairman, are you going to make the same suggestion to the witnesses?

Mr. BROOKS. Under that prompting, I make the same suggestion to the witnesses.

We are very happy this morning to have Gen. John Charles Taylor of the American Legion here.

General Taylor has some witnesses he is going to present to the committee. And I want to say, General, that we are always glad to have you before this committee. It is a distinct pleasure to have you. And I want you, if you will to present your witnesses to the committee. Then we can proceed with their testimony.

STATEMENT OF GEN. JOHN CHARLES TAYLOR, REPRESENTING THE AMERICAN LEGION

General TAYLOR. Thank you, Mr. Chairman, and gentlemen of the committee. The Legion certainly appreciates this opportunity. As you know last session, Mr. Chairman, we were helpful, I hope, in the legislation which was favorably reported by the committee and eventually as a result of all of our efforts included in the Selective Service Act when it passed the Senate and so became a part of law.

Presently, however, with unification, the problem has become a broader one. And this is something that the American Legion is deeply interested in. We have three and a half million members in the American Legion.

Two and a quarter million of them are World War II men. And we have over a million members in our American Legion Auxiliary. And this of course is something that has been before us for years. So we welcome this opportunity.

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And I have here with me today as our witnesses—because we have divided it into two phases: The one dealing with the Army and Air Force, I will say, and the other phase dealing with the Navy—first of all, Franklin Riter a very outstanding member of the bar of the State of Utah.

In fact, he is a member of the bar in New York, Oregon, California. Utah, and Texas, and a member of the Supreme Court of the United States. He is a member of the Judge Advocate Association and the American Bar Association, and for many years was chairman of the property section of the Utah State bar.

In 1942 he sailed for England as a member of the original cadre which established the branch office of the Judge Advocate General in the European theater of operations, at Cheltenham, England.

And this branch was established, as you know, by order of the President. The office exercised its appeal at jurisdiction over courts martial of the theater until it was terminated by order of the President in February 1946.

He was chairman of the original board of review in the branch office as constituted by the President, and upon the increase of the panels of the court to five he acted as the coordinator of the boards.

He is the only officer who served in the branch office during the entire period of its existence.

And then, I have with me John J. Finn, who is the judge advocate for the American Legion for the District of Columbia and who for 33 months of the time that he served in the Navy was in the Office of the Judge Advocate General. He served on the board of review set up by the Judge Advocate General's office.

He assisted Judge McGuire and his committee in its inquiries which led to the conclusions set out in the report of the committee set up by Mr. Forrestal. He was the recorder and a member of the Ballantine Board then set up for the Navy.

So both of these witnesses are excellent lawyers in private and civilian practice presently, and I think they can give the committee some of the information and some of the facts that they are desirous of knowing.

And in particular, they can present the point of view of the American Legion, and after all that is what we are interested in: The point of view of the veteran as distinguished from the man who is in uniform.

From their long experience and their long actual experience with this entire problem, I know they can be of great assistance to this committee.

And Mr. Chairman and gentlemen of the committee, I certainly express my appreciation for the American Legion for this opportunity to appear before you.

Mr. BROOKS. General Riter, you have a prepared statement?

STATEMENT OF GEN. FRANKLIN RITER ON BEHALF OF THE AMERICAN LEGION

General RITER. I have and it has been filed with the recorder.

Mr. BROOKS. Just have a seat, sir, and proceed.

General RITER. Gentlemen of this subcommittee, I first must express my appreciation of this opportunity of representing the great American Legion. I am commander of the Department of Utah in the Legion today.

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Since my return to civilian life after nearly 7 years' service, 4 years of which were overseas in that show, I have continued my interest and study of military justice.

It is not just casual conclusions that I have reached, but during the period of the long armistice I was a service officer and taught in Reserve officer's classes, as well as serving short tours of duty, and during that time observed the functioning of military justice.

Therefore, my conclusions are not hasty.

I want first to indicate to you gentlemen that the American Legion presents no program or ideas that will tear down our armed forces or their efficiency. An Army and a Navy has only one purpose, and that is to fight wars and win battles. They are not a social-service organization. They are not a reform organization.

And the last thing in the world that this great organization to which I belong desires is to do anything that would impair the efficiency of the services as a fighting force. On the other hand, the American Legion visions the new world and the new Army that we are living in and have today.

During that period of the small Army of 150,000 or 160,000 men, I suppose that the 1920 code that came out of that memorable investigation conducted primarily by the late Senator Warren of Wyoming, Senator Lenroot of Wisconsin, and the then Senator Wadsworth of New York, represented a great advance.

The history of that legislation, with the prolonged investigation, which was cut across by the feud between General Crowder and General Ansell, was indicative that as far as 30 years ago the legal profession—the profession to which I belonged and have devoted my life—was fully aware that we were in an evolutionary process and that no longer would the point of view in the approach to this problem be one of a small professional Army.

Let me remind you that there was a thesis that was laid down—and we found that in some of the law cases, even as high as the Supreme Court—that when a man put on a uniform he surrendered some of his rights as a free citizen.

It came into existence under that theory of contract of enlistment that a man did not have to belong to the Army or the Navy unless he voluntarily enlisted, and out of it came that curious theory that he surrendered certain constitutional rights.

Now I for one, from the beginning to the end, have asserted that the fifth and sixth amendments, with all the benefits, privileges, and rights thereunder, was applicable to the armed forces of this Nation except insofar as the provisions in the sixth amendment concerning presentment to the grand jury that our founders wrote into it.

With those exceptions that are stated in the face of it, I believe and I sincerely believe this morning that an American citizen when he proudly puts on the uniform of his country does not surrender those constitutional protections.

And, in my capacity as a member of the board of review in Europe, I have written opinions to that effect. And I have asserted it and I assert it this morning, notwithstanding the curious belief written by General Crowder and filed in the Warren investigation, where he asserted that those constitutional protections did not exist for the soldier or sailor in our forces.

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And I want to make it plain to you that my remarks this morning are premised on that proposition that an American citizen when he puts on the uniform does not surrender his constitutional rights. And that is very important in some of the points I am going to discuss.

There is a very serious question of public relations involved in this, because no longer are we going to have a small professional Army of 100,000 or 175,000 men. We are going to have, thank God, a certain number of men who will devote their lives to the matter of national security.

The professional soldier, airman and sailor—we need them. And any of my remarks here today are not in derogation of those fine men in the least.

But I do assert to you that the Army that we will have—and my remarks are primarily devoted to the Army and the Air Force and not the Navy, as my associate, Mr. Finn, will cover that—will be a revolving Army, with men with 3, 4, or maybe 5 years in the service returning again to their civilian occupations.

And, consequently, I make a special plea here this morning that our professionals—our professional sailor men and our professional soldiers—please adjust their viewpoint to the fact that they must maintain a public relationship toward this revolving body of men so that when they return them to civil life they return them as friends and not as enemies.

And that is one of the premises that the American Legion comes here this morning with, because we are devoted to the cause of national defense.

I invite you gentlemen's attention to the fact that, during those dreadful days of pacifism through which we lived in the twenties and early thirties, what little visible force we had was all but destroyed through the subversive forces in America; it was the American Legion that was steadfast and valorous in the cause of an adequate national defense.

And that is why we stand forth as the leading sponsors of universal military training, because we believe that is the democratic process in this land of ours. So, on that premise, I invite you gentlemen's attention in this proposed bill to several matters that I consider of importance.

Now, I listened with great interest to Mr. Bryan's remarks here yesterday. Mr. Bryan and I, a year and a half ago, at the time H. R. 2575 (the Elston bill) was pending, had several personal conferences on this subject.

Now, theoretically, and in the ideas of a perfectionist, I agree with Mr. Bryan that the appointment of the courts—and I direct my remarks primarily to the general courts because Mr. Bryan did—by the Judge Advocate General would be desirable.

But I say to you gentlemen that, after close and careful study, not of a few months but of years, it is imposing an administrative impossibility upon the Judge Advocate General to do that.

Now, Mr. Bryan speaks of having panels submitted to the Judge Advocate General for the selection of the courts by him. That does not mean anything, because those panels would originate at the same sources where the court would be appointed under the present system.

And you may be pretty sure that the desires of the commanding officer of the Fifth Infantry Division or the Normandy Base would

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show itself through those panels coming up to the Judge Advocate General. So, you gain nothing by it whatsoever.

And, furthermore, there is the administrative feature. It would require a personnel over here in the Pentagon devoting its entire time to the selection of those men. It is my deliberate opinion that such a plan is physically and practically impossible.

And I reach that conclusion with a good deal of mental travail because I liked Mr. Bryan's idea behind it; but, having lived through this as I did through 7 years, serving a year and half first in Washington here and then another year and a half when I returned from Europe, I am forced to the conclusion that it, from a practical standpoint, will net us nothing.

Furthermore, the other witness that appeared here yesterday discussed having a corps, say, appoint the court for a division, an army for a corps, and so on. It results in the same thing. Let us recognize the fact that probably the commanding general of the division would never see the panel recommended. It would be his chief of staff or one of his staff officers. Let us recognize just what it is.

And when you get all through with it, whether it is appointed directly by the Judge Advocate General's office here in Washington or by the judge advocate of a higher echelon, you get the same men as you would get in the first place, because you may be pretty sure that the same men would be sent up there on those panels as would be appointed if the division commander or the base commander appointed them in the first place.

Mr. RIVERS. In that connection, Mr. Chairman, will the gentleman yield?

Mr. BROOKS. The gentleman from South Carolina, Mr. Rivers.

Mr. RIVERS. General, are you going to suggest an alternative?

General RITER. Yes. I am going to tell you what I will suggest to you. And this will not be a popular one. But I want you to take that section here that prohibits interference or undue pressure with the court—article 37—and I want you to write into it a jail and fine provision enforceable in the United States district court and indictable under the civil law.

And I believe I am the first man that ever suggested that. I can find no other remedy to this situation.

Mr. DOYLE. Page 32.

General RITER. Take your article 37. It is an offense now probably under what we would call 96 or under proposed article 98 for deliberate violation of the provisions of the code. But I do not think that means anything. I agree with Mr. Bryan.

I agree with Mr. Wels. To leave it as it is means nothing, because can you imagine an outraged major or captain who has had visitations placed upon him by the appointing authority filing charges against the division commander? Well, I can't.

And then it would leave it to come from above, and I am pretty sure that, except in some case that invited public attention, no action would be taken. So my best thought on it is that that article 37 be amended so as to make it an indictable offense in the Federal courts, with a jail sentence or fine, or both on top of it.

And you can use the classical $5,000 or 5 years. It would transfer the prosecution into the United States district attorney's office. And

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I have no constitutional difficulty with it for an offense committed in France or Italy or Europe because of the Blackner case, you remember, coming out of the Doheny affair, where Mr. Blackner fled to France and committed his offense.

Mr. RIVERS. Now——

General RITER. So, I have no constitutional difficulty with the thing because that would be an offense against the process of justice against the United States.

Mr. BROOKS. General, that would be a requirement that in the event anyone attempted to influence the decisions of any court——

General RITER. Yes, sir.

Mr. BROOKS. In the armed services.

General RITER. Yes, sir.

Mr. BROOKS. That action would then be punishable by fine and imprisonment not to exceed $5,000 or 5 years.

General RITER. I want the jurisdiction spread into the Federal courts. I do not want that left in a military-justice code. Leave it there. It makes duality of jurisdiction. But I want the United States district attorney to say in New York sitting over that thing.

And I will tell you this much: A general would be a fool, with that kind of thing facing him, to go monkeying with it. I admit it is moral pressure, more than practical.

Mr. RIVERS. You better think that through and look at the practical application of that suggestion.

General RITER. I have.

Mr. RIVERS. But let me make this observation, because my mind is just as open as anybody else's. We should also think about the statute of limitations, in preferring these charges, because nobody will have the nerve to even suggest such a thing until he becomes a civilian.

General RITER. I was going to touch on that, sir.

Mr. RIVERS. I see, sir.

General RITER. It is a corollary matter. You have to expand your statute of limitations so your statute starts to run, say, 3 years after the emergency or the war is declared.

Mr. RIVERS. I see.

General RITER. You have to change that. You cannot leave your statute run, allowing it to be barred.

Mr. RIVERS. That is right.

General RITER. Because you are going to be pretty sure that if there is any criminal prosecution instituted it is going to follow at least when the general comes back to the United States.

Mr. RIVERS. That is right.

General RITER. But I cannot, gentlemen, reach any other conclusion on that, because, as much as I like Mr. Bryan's idea, it is the practical aspect of it. And I want to introduce into this a moral pressure, so that a staff judge advocate, when he stands up to his general, will say, "General, I disagree with you. Now, you're boss, but listen; you have a penal provision facing you here."

I know this much: There is not any of us who would not take a second thought on the thing.

Mr. RIVERS. You would not suggest, though, that we abandon the idea of an independent Judge Advocate's office; would you?

General RITER. Oh, well, listen, I am one of the original men that fought for that separate promotion list.

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Mr. RIVERS. So, in addition to what you have suggested, have a separate Judge Advocate General's office, too.

General RITER. Yes, but that does not get to this proposition of——

Mr. RIVERS. I mean in addition to this proposition. You would have a double grant.

General RITER. Oh, I am devoted to that. All the power you give to the Judge Advocate General I am for, because I think it is a safeguard. But I want to reach into this problem that the American Legion considers, sir, absolutely critical.

We do not want to destroy the disciplinary powers. We want to as far as possible make it practical. Now let me just give you the picture when General Patton broke through St. Lo and made the run around the end and squeezed Paris.

General Patton—and this is from my own observations of the records of trial coming up from the Third Army—had the greatest of difficulty himself to convene a court because they were out there fighting a war.

To have Myron Cramer, who is Judge Advocate General, sitting back here in Washington trying to pick a court for George Patton's army making that fast run around the end just presents a physical impossibility.

And then, when you get over to General MacArthur's theater, to think of trying to impose that here at Washington is out of the question. It is impossible. The alternative, as Mr. Wels has suggested, I believe, is at the higher echelon. But you would get back to the same proposition. You would get the same men.

Now, if this Congress can work out a scheme where it is practical, fine. But I do not think it can be done. And I want to see this penal provision written in there. I have stood for it for years, and I believe it is an effective means of serving notice upon civilian and military men alike that these courts of ours in the Navy and in the Army are courts and they are not administrative arms of the generals. We had that fine-spun theory for years. It was very offensive——

Mr. BROOKS. General, would you not make your suggestion cover not only Army personnel, so as not to influence a service court but also anyone else?

General RITER. Certainly. Some of the most invidious things that we have had was the attempted influence of civilians upon military courts. It is something that a lot of us do not like to discuss very much, but it has been there, and it has been abandoned.

And I would make it a penal offense. Why should not the military courts, with the tremendous jurisdiction that they are acquiring, have all the protection that we afford our civil courts as to interfering with the processes of justice? I believe they should.

Mr. RIVERS. Why, of course.

Mr. DURHAM. You mean you would extend it to civilians, too?

General RITER. Yes; I would, indeed. Anybody.

Mr. RIVERS. Surely.

Mr. BROOKS. Mr. Doyle wanted to ask you a question.

General RITER. Yes.

Mr. BROOKS. Mr. Doyle, from California.

General RITER. Yes.

Mr. DOYLE. The general has already answered my question; thanks.

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General RITER. Now I come on to another subject here. It was not discussed yesterday either by Mr. Bryan or Mr. Wels. That is this matter of pretrial investigation. It is one of the most bothersome and troublesome problems that they have.

If you will examine the testimony before the Warren subcommittee 30 years ago, you will find suggestions that this pretrial investigation under A. W. 70 of the 1920 code was to be similar to a committing magistrate's hearing in civil life.

Now, very early after the adoption of the 1920 code, the Judge Advocate General, in a series of opinions, held that pretrial investigation after the filing of charges was jurisdictional and that a failure to comply in a substantial, material manner with the requirements of A. W. 70 destroyed the jurisdiction of the general court. That seems to have been the opinion and the law for 15 or 20 years.

Early in the Mediterranean campaign, however, when this matter of pretrail investigation became crucial, we had a board of review opinion approved by the Judge Advocate General that reversed that and held that A. W. 70—the pretrial investigation provision—was directional only, and that the failure to comply in the substantial manner with the provisions of A. W. 70 did not interfere with the jurisdiction of the court.

It was a Judge Advocate General's ruling on an opinion by a board of review sitting in Washington; and all boards of review throughout the world—both the European theater, the CBI, and the Pacific southwest theaters—felt that it was necessary to follow that rule, although it was a complete reversal of 15 or 20 years' standing.

After the war was over and the habeas corpus started to appear—and on my return from Europe I was given special assignment, living in the Federal courts down here defending a number of these habeas corpuses along with Colonel Hughes—we had the notorious Hicks case appear up in the middle district of Pennsylvania, with Judge Biggs, now in the circuit court of appeals, writing the opinion.

Now, the interesting thing about the Hicks case was that Hicks was charged with rape on an Englishwoman. There was enough evidence there, in testing it by my civil standards, that had I been a trial judge I would have sent that case to the jury.

There was a conflict in evidence. There was the whole question of consent and that typical thing in your rape case. But when Hicks landed back here at Lewisburg, under a sentence that had been substantially reduced, he employed counsel and commenced habeas corpus proceedings.

And in the Hicks case—*Hicks* v. *Hyatt*, in 64 Federal Supplement 238—Judge Biggs held that compliance with the pretrial investigation was jurisdictional and that, since there were defects which he discoverd in habeas corpus proceeding, the general court sitting there at the western base section in England had no jurisdiction over Hicks and the judgment of conviction was void.

The Hicks case has produced a tremendous amount of difficulty both for the Department of Justice, the Attorney General, the Solicitor General, and the Judge Advocate General, because, remember, on those appeals on one side it must be conducted by the Solicitor General.

Now, simultaneously we had the same type of proceedings originating out in Kansas, Ohio, Oklahoma, and Georgia. We had a

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series of cases that adopted in principle the Hicks doctrine, but found substantial compliance with A. W. 70. There is a great group of those cases today, some of them finding substantial compliance and denying the writ, and others finding lack of compliance and following the theory of the Hicks case and setting the man free. There is the greatest confusion in the law today on it.

Now I note with interest how the draftsmen of this proposed code have met that situation, and I think they have met it bravely, and I approve of it. They declare that noncompliance with the pretrial investigation requirements is not jurisdictional, but that upon being invited to the attention of the court, shall take one of two actions.

It shall either order a further and an additional investigation and report it back to the convening authority, or it shall recess until the accused and his counsel are placed in possession of evidence discovered at the pretrial investigation.

It appears to me that that is the satisfactory answer to that problem, because operating, if you will permit me, with the new discovery provisions of the civil rules of our Federal courts, that right of discovery is an important thing.

I have a case now pending up in Wisconsin where my whole case is built on my ability to go in and discover the records of the defendant company. Otherwise I could not prove my case.

In some of our States that right of discovery has not been elaborated as it has in the Federal rules. But right there is an example where there should be the greatest amount of discovery not only on the part of the prosecution but on the part of the defense.

And all evidence discovered should be readily made available. And, as Mr. Bryan or Mr. Wels suggested, not only the testimony of witnesses but any documents should be turned over to the defense.

We cannot conduct litigation today on the old principle that it is a game of chance. We lawyers are insisting that there be frankness in disclosing your evidence before trial. And I believe that that principle must be carried forward here. And it appears to me that this provision as now written meets that situation.

Now that brings me to my whole pet of the thing, and that is article 44, the double-jeopardy provision, which has been carried forward from the 1920 code. And let me read it to you. It is not long:

> No person shall without his consent be tried a second time for the same offense, but no proceeding in which accused has been found guilty by a court martial upon any charge or specification shall be held to be a trial in the sense of this article until a finding of guilty has been final after review of the case has been fully completed.

That is an archaic provision, gentlemen, that must go, because the day before yesterday there was argued in the Supreme Court, just a few blocks down the street here, the famous Wade case on habeas corpus.

And that case is my pet, because for 30 years this section 44 of the uniform code has been offensive to any lawyer that I have ever talked to. It is archaic in the sense that it keeps only "autre fois acquit; autre fois convict"—the old common law idea that there had to be a verdict before jeopardy could attach.

That is, a man had to be acquitted or he had to be convicted before he could plead. We know that that is not the law under the fifth amendment today—that jeopardy can attach in our civil courts as soon as the jury is sworn and the first witness sworn.

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And yet the military courts have attempted to perpetuate that archaic rule. Now Wade was convicted of rape. He had a full trial. The court went into closed session to deliberate upon its verdict.

It came out an hour later and told the judge advocate:

We want you to bring before the court the father and mother of the complaining witness and want to hear their testimony. And we will adjourn this court until the call of the president. Bring them here.

A few days later the commanding general of that infantry division transmitted the case to another outfit further up on the line and asked him to take jurisdiction and try the man because the witnesses were available at that point. That jurisdiction transmitted it to a third jurisdiction. And Wade was brought to trial on the charges before a new court.

His counsel, Richard Brewster, of Kansas City—and the case is unique in this respect—who was his defense counsel in that court-martial proceeding in Europe, argued his case the day before yesterday in the Supreme Court of the United States.

He has continued that case straight through from beginning to the end. At the second trial he presented a completely extended stenographic record of the first trial and made the plea of double jeopardy.

And it was promptly denied under this archaic article because the general had withdrawn the charges before they had been acted upon.

It came up to the board of review. The board of review No. 4, composed of three very fine lawyers from civil life—one who is now in Washington, one who lives at Scottsbluff, Nebr., and one at Center, Tex.—wrote a memorable opinion on it.

The Assistant Judge Advocate General differed from it in this respect: In his endorsement he did not like this archaic doctrine displaced by this, and for the first time there was introduced into the interpretation of this statute—in order to save the coustitutionality of it, we believe—the doctrine of imperious necessity.

We found because of endorsements in the record that there was an imperious necessity in view of a tactical condition on the battlefront that prohibited the production of the witnesses at the first trial.

The curious thing is that Justice Murrow, who wrote the opinion in the trial court—that is, in the district court in the habeas corpus proceeding; I forget who wrote it in the circuit court of appeals reversing Justice Murrow—and the circuit court of appeals both take the same premise, that this statute is not complete and that the doctrine of imperious necessity prevailing in the Federal courts—that is, that jeopardy may attach before verdict—prevails notwithstanding this article in the military courts.

Then the decision goes off, and where Murrow the trial-court judge differed with the circuit court of appeals was whether proof of imperious necessity had been established.

I make a special plea to Congress to take that archaic article away from us and put a modern article in that would——

Mr. BROOKS. General, would you want to suggest changes? Would you submit to the committee any changes?

General RITER. I have not attempted, sir, to draft any statutory changes on the thing. In re Cornero, a circuit court of appeals decision—and undoubtedly it will be cited here in the Supreme Court decision on it—carried language that could be very well carried over into a statutory enactment.

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It recognizes the common-law pleas of former conviction former acquittal, and then the proposition that jeopardy may attach before findings. The Wade case is a classical example of what will happen in allowing the convening authority to take two bites at the cherry.

It was obvious there because Wade was charged with another soldier and the other soldier was acquitted, and it was obvious what was going to happen in the Wade case. There was going to be an acquittal.

But the court, with its right, as any court has, to have other testimony brought about, it asked for additional testimony. In the Federal court a district attorney must have his witnesses in court at his peril.

He cannot go ahead and try a lawsuit and put a man in the penitentiary and then, when he sees he is going to get licked, nolle prosse his case and then come back and take a second bite.

No commanding general should be permitted to do that today. He has to try the lawsuit and win or lose it right there. That is consonant with our whole concept of Anglo-American justice. We have to get rid of these archaic provisions in the new Military Justice Code.

Now, there is another thing I want to talk about. I have long been an adherent to the idea and I want to get rid of that vermiform appendix on our military courts called the president.

I do not think there is any purpose for him on the court and I never have believed it. It is just a remnant of the idea that you have to have some boss there, some section boss. Oh, they call him commanding officer.

And I do not like it in a judicial body. I want the law officer given rank by virtue of his office. I do not care if he has a brigadier general on the court. I have asserted it. Now there are lots of civilian lawyers who will not agree with me on this thing, but I assert to you that that is another archaic survival.

That leads me right to this matter of the new function of the law member or law officer. We have many in the role at last, after some of us have advocated it for 25 years, of a judge. We have forbidden him to vote on the court.

Well, if you will get rid of that president of the court and give the law officer rank by virtue of his office, you have accomplished the whole thing. Now some of my associates in the Reserves, civil lawyers I am talking about now, do not like the idea—and I have consulted with them in the last 10 days—of taking the vote away from the law member and prohibiting him from the closed sessions of the court.

There is much to be said in favor of their argument. Now I am not presenting the military aspect. I am talking as a civilian lawyer to you. They take this position, that after all the law officer under the new set-up will be a lawyer—judge—and he is the stabilizing influence on the court and that his presence in the closed session of the court is absolutely necessary because his mandatory instructions here are not like the specific instructions of a trial judge. They are mandatory.

That is highly commendatory and it ought to have been there long before. But they are not all-inclusive of the offense. And to allow

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a body of laymen to go into closed session without having some stabilizing influence along with them may produce injustice.

Now I am presenting that other angle to you. I personally prefer to have the law member out of the deliberative session.

Mr. ELSTON. General, what stabilizing influence does a jury have in any criminal case?

General RITER. Now you have answered my end of the argument for me. That is correct on the thing.

Now perhaps this matter of instructions to the jury opens up an interesting question. I do not think that the average jury ever did understand an instruction or a lot of instructions. That is really your trouble.

I am just presenting to you gentlemen the two sides of the argument on this thing. There is a very decided opinion among the civil lawyers who are interested in military justice that that law member should enter the deliberative assembly of that court.

Mr. ELSTON. Well, I agree with you that that is true. When you are defending someone you would rather have the jury decide rather than have the court in the jury room helping you.

General RITER. Yes; that is my personal viewpoint and my filed statement with you advances that theory. But I thought it fair to you gentlemen to invite your attention that there is a division of opinion on that.

But I would like to get rid of that president of the court. Then we have a judicial process there.

Now I am going to tell you something else—why that is. If you can break that command chain in there, by getting rid of that president, you have probably accomplished a lot toward the independency of the court.

Mr. ELSTON. You think you might solve it if you allowed the court to elect their own foreman, as the jury elect their own foreman?

General RITER. I do not know what good it would be.

Mr. ELSTON. I mean, he has no more authority than anyone else except to report the findings of the court.

General RITER. If you wanted to do that. But I do not like that man sitting in there when the chain of command comes on down. And I have never liked it. Why when I went before the Vanderbilt committee on this very thing and suggested it, frankly they did not pay much attention to it.

But I still assert that with the increased power of the law member it is a very necessary reform.

Mr. BROOKS. Well, General, if you did not have a president you would have to have a chairman or some presiding officer in the court.

General RITER. Well, let the law member do it. He is the judge.

Mr. BROOKS. You would allow the law member to go behind the scene and deliberate on the verdict?

General RITER. No; I do not want him there. I do not want a judge in any jury room.

Mr. BROOKS. And if you leave it to selection of the personnel of the court itself, will it not always end up on a basis of seniority?

General RITER. It probably may.

Mr. BROOKS. The senior officer will be the presiding officer of the court.

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General RITER. Officially you take that man out of the court. That is the important thing. That is a survival of the idea in the days when the courts were the administrative arm of the commanding general. That is where that came from.

Now to pass on. Mr. Bryan passed on 66 (e), which allows the JAG to take the second bite of the cherry. When he finds one board of review that he cannot agree with he can shop around in his command and get another one. That is an insidious thing.

To refer the case again for reconsideration by the board of review that originally heard the case, yes, because that is nothing more than occurs on a petition for rehearing. But not another board of review.

That is just the kind of thing that has been fought administratively for years in the Judge Advocate General's office.

Now, this brings me to article 67: The setting up of this new court, this new high court. That section is badly drafted. I cannot imagine how the draftsmen let that by. The section as it is is ambiguous. It says nothing about tenure of office. It does not say how many.

And beyond all peradventure if the President appoints it the Senate should confirm those appointments because they are circuit courts of appeal justices. I think the whole section should be rewritten, with before it the provisions of the code relative to the circuit court of appeals and let it parallel it very closely as to the qualification.

Mr. DURHAM. You agree with this section?

General RITER. Oh, a hundred times, but I want the name changed. I want that called military court of appeals. I do not want it called judicial council, because that carries the idea that that is another administrative body set up within the confines of the War Department or the Air Force.

Let us give it its right name and its dignity. And it will have a tremendous influence on the public. Let us call it the military court of appeal—that is what it is—and give it its dignity.

Mr. DURHAM. Would you add the word "civilian" to it?

General RITER. What is that?

Mr. DURHAM. Would you add the word "civilian" to it?

General RITER. No; I do not think it is necessary. I make a special plea that the name be changed.

Now there is one other provision that I should have touched on and that is courts martial records, particularly with reference to exterior matters happening before, at, and after trial. My boards of review in Europe watched constantly for attached papers or suggestions in the record as to undue influence of the general sitting up there.

We were laying for it. Toward the end of the war, when things were established, we began to find in our records where defense counsel did not hesitate to throw into the record the kitchen stove if it involved this matter of undue influence. You see, we passed in this war to the stage where after all the American lawyer was amounting to something final.

We were told at first that this was going to be a war without lawyers in it. By that time we justified ourselves. And the defense counsel came along—and gentlemen we had some marvelous trials—and would throw into the record, oh, orders that would come down from headquarters.

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But I would like another provision to supplement this matter of records that would provide definitely and make it mandatory that the records of trial contain copies of all communications or, better, the original communications passing between the general and the court, any communications between the court and the general, including the staff judge advocate, and require that there be attached to the record a summary, or, better, a stenographic report of any oral conversations between the general and his court and get it right there so the board of review can get at it.

That is the thing that impaired us. We could not get behind that and we knew that in some cases that thing existed. Yet we did not have anything before us.

Mr. ELSTON. How would you perfect your records by getting oral conversations between the commanding officer and the court?

General RITER. Well, make him have a stenographer there.

Mr. ELSTON. Well, suppose the oral communication between the commanding officer and the court was out of the presence of a stenographer?

General RITER. Well, that is something again where you are touching over into a practical proposition. Honestly, I do not know the answer to it.

Mr. ELSTON. Section 37 prohibits any effort to use influence.

General RITER. Yes.

Mr. ELSTON. On the court.

General RITER. Yes.

Mr. ELSTON. I do not know just how you would make a record of oral conversation.

General RITER. Well, there have been instances—I have talked with officers about it—where after he has appointed the court he has called them into his office. There should be proper injunction——

Mr. ELSTON. Well, if he does that now under section 37 he would be guilty of an offense.

General RITER. All right. Then, if he is so foolish as to try it, I should think that should be written into the statute. I would like to see that so we can perfect our courts martial records against that kind of thing.

Mr. ELSTON. Of course I am in thorough accord with you that you have a complete record so far as you can.

General RITER. We just could not get some of those things.

Mr. ELSTON. But to require some of the things you just suggested would seem to me to be an impossibility, such as conversations between——

General RITER. I admit, frankly, the practicality of it. But there should be some injunction there that that thing be contained in the record so as to give the appellate tribunals the chance to get at it.

Mr. BROOKS. Well, General, will you not go back to your original suggestions there that you would make all influences which are improperly brought to bear on the court punishable as a crime.

General RITER. Most emphatically; I do.

Mr. BROOKS. And could you not incorporate that idea in the suggestion you made?

General RITER. Exactly. It can be done. It is a matter of draftsmanship.

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Now, in conclusion, I believe that if this legislative body sets and enlarges the functions of the Judge Advocate General—and I am devoted to that principle, I believe in it—I think this committee and Congress should examine into very carefully this matter of clemency.

There was in 2575 a much debated little clause: "In the exercise of clemency." As originally conceived by Mr. Elston's committee, the Judge Advocate General exercised that. As I understand it, there were influences brought to bear to write a sweet little clause in there: "Under the direction of the Secretary of War" as originally written and then "Secretary of the Department."

After endowing the Judge Advocate General with those powers of clemency, they proceed to put that circumscribing clause in it. And this exhibits again the jealous desire to take from the Judge Advocate General those powers which he should be endowed with. It is quite obvious here in this draft that they do not intend him to have that.

Now if we are going to be honest, and come right down the line, where Congress says that the functions of the Judge Advocate General are judicial and not executive, then the Executive should exclusively have the power of pardon.

Why put these functions on the Judge Advocate General, if you are going to confine the powers of clemency to the Executive? Why do it?

Mr. DURHAM. We gave the Under Secretary of War statutory authority.

General RITER. Yes; I know it.

Mr. DURHAM. Why should we not give statutory authority to the Judge Advocate General?

General RITER. Fine, if he exercises it independently. But what I am talking about is that little clause: Under the direction of the Under Secretary of War. What that thing meant was that it just robbed the Judge Advocate General of his authority, except in an advisory capacity.

Mr. DURHAM. It is the old idea of chain of command.

General RITER. Sure; and we are going to get rid of that and make the Judge Advocate General with his corps independent of that.

Mr. DURHAM. That is what we have been trying to do.

General RITER. All right. Now that brings me to the petition for rehearing after trial—and I will quit—to the Judge Advocate General. Now I had a hand in bringing that about, at least the provisions for the practice in the manual.

This draft of the thing has emasculated it. It was intended as a relief for the accused and now they say he can file a petition for newly discovered evidence or fraud upon the court.

Why, gentlemen, that will be just a few cases. And the great power given under the 2575, of that power of the Judge Advocate General to relieve an accused who is in the hoosegow by the filing of the petition within 1 year, they have just emasculated and torn all to pieces—by putting it on newly discovered evidence and fraud on the court.

Well that is just holding up a chimerical thing that in practice does not exist. We want those powers that were written in 2575. And I know there are lots of cases where there is not any such thing as newly discovered evidence and there is not any fraud on the court.

But there have been surrounding facts and circumstances on the battle line, such as when that kid ran away from the battle line or when he slugged the sergeant or maybe slugged the captain.

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There were mitigating influences there which the Judge Advocate General under the 2575 provision had the right to take cognizance of. And this draft robs him of it. I make a plea to put it back.

Thank you.

Mr. BROOKS. Thank you very much, General, for the very fine statement that you have made and which has been most interesting to this committee.

Mr. Doyle asks to ask you a question.

General RITER. Yes, Mr. Doyle.

Mr. DOYLE. General, the reason I left your testimony, I had to go to another subcommittee and testify.

On yesterday I made the statement—I am a lawyer, by the way, at home——

General RITER. I know you are.

Mr. DOYLE. I made the statement that I felt at all times the facts should be reviewable. Am I in error?

General RITER. You are not. Listen—can I just take a minute on that? That touches me all off on this thing. When we set up the boards of review in the branch office of the European theater, we were independent of the command at the ETO. We sat as an independent judicial tribunal under the President as to military justice matters.

All right. That was the fifth paragraph of article of war 50½ that President Roosevelt acted on. And it had been overlooked during all of the years. Now, when that was set up there the internal practice of that reviewing board or court—we functioned as a circuit court of appeals—was not defined.

It was not defined by the statute. The President defined it in setting up the court. As a consequence we found ourselves having to develop our owh principle of law. And I had no place to turn except the circuit court of appeals.

And there we ran against that rule of where there is evidence to support the verdict. We have all lost our case on that. They would not go behind it. And time and again, if we would have had the right—we knew that certain witnesses must have been plain liars that stood there—to judge the credibility of witnesses and weigh the evidence our results would have been different.

And by the way, in that automatic appeal under the New York Constitution, I believe, for capital cases, or that form of automatic appeal that they have there, as I recall the constitutional provision in New York, on capital cases, it specifically gives the court of appeals the right to weigh the evidence and judge the credibility of witnesses.

I am most emphatic on that.

Mr. DOYLE. Thank you very much.

General RITER. Now this new court that we are setting up—you see how that is limited on points of law. Why that is inadequate. That court must have the power to go further than the circuit court of appeals.

Mr. DOYLE. Thank you.

General RITER. There have been too many convictions in the circuit court of appeals because the court would not go any further than say, "There is evidence here, that is enough."

Mr. BROOKS. General, I would like to ask you this question, that has been asked me.

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General RITER. Yes.

Mr. BROOKS. Does the American Legion advocate the setting up of a separate Judge Advocate General's Department in the Navy and in the Air Force, as you have in the Army?

General RITER. The American Legion goes further than that. We have a mandate from our executive committee just recently asking that the functions of the Judge Advocate General of the Navy, Air, and Army be consolidated into one. Mr. Finn is going to present that aspect of it.

Mr. BROOKS. And that would be a separate force?

General RITER. Yes. Mr. Finn is going to present that.

Mr. BROOKS. Any further questions? Thank you very kindly, General.

General RITER. Thank you very much.

Mr. BROOKS. Mr. Finn.

Mr. POSTON. I am the associate director of the American Legion Legislative Committee. General Taylor had to leave to go to another committee meeting. I would like at this time to introduce Mr. Finn to you.

Mr. BROOKS. Just have a seat, Mr. Finn. We are very happy to have you, sir. You have a prepared statement, Mr. Finn?

STATEMENT OF JOHN J. FINN ON BEHALF OF THE AMERICAN LEGION

Mr. FINN. I have a prepared statement, sir.

(The prepared statement follows:)

PREPARED STATEMENT OF JOHN J. FINN, JUDGE ADVOCATE, DISTRICT OF COLUMBIA DEPARTMENT OF THE AMERICAN LEGION, CONCERNING H. R. 2498, THE PROPOSED UNIFORM CODE OF MILITARY JUSTICE, MARCH 8, 1949

I. INTRODUCTION OF WITNESS

The witness appears on behalf of the American Legion.

The witness was graduated from Northeastern University, School of Law. He was admitted to the Massachusetts bar in 1929 and was actively engaged in the practice of law in the city of Boston from that time until entry into the Navy in October of 1943. His practice was almost entirely devoted to trial and appellate work defending negligence and contract cases for insurance companies and others with a substantial experience in the defense of criminal cases.

Upon entering the service the witness was commissioned a lieutenant (junior grade) and assigned to the Office of the Judge Advocate General at Washington where he served for approximately 33 months in the review of general court martial cases. For approximately 3 months of that time he served on the board of review set up in the Judge Advocate General's Office near the end of the war. The last 4 months of his service were spent as recorder and member of the Ballantine Board set up by the then Secretary of the Navy, Mr. Forrestal, to review and consider revision of the Articles for the Government of the Navy, the providing of officers to perform law duties and related matters.

The witness also assisted Judge McGuire and his committee in its inquiries which led to the conclusions set out in the report of that committee on, relatively, the same subject.

The witness is a member of the Masssachusetts Law Society, the American Bar Association, the Federal Bar of Massachusetts, the Bar of the United States Court of Claims and of the United States Supreme Court. He is a member of the Reserve Officers Association of the United States. He is presently the judge advocate of the District of Columbia Department of the American Legion.

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II. GENERAL COMMENT

I expect to confine my remarks to three main categories: (1) Personnel concerned with legal duties in the Navy; (2) jurisdiction of naval courts; (3) review of cases—all of this in connection with H. R. 2498, the bill here under discussion.

The present bill is an admirable step forward insofar as military and naval justice is concerned. As will be noted in the commentary of the draftsmen of the bill, much that is contained in the bill is new to the Navy and represents improvements which many have thought long necessary and overdue. The format of the proposed legislation is also very fine and presents a readable, coherent, and readily understandable code which will enable those who are compelled to work with it, if passed, to accomplish their tasks with greater assurance and dispatch than has been the case in the past.

Furthermore, the purpose of the proposed legislation carries out the ideas of the American Legion in putting into one code the law applicable to all the armed services.

No better illustration of the need for such a code can be furnished than the case of *United States ex rel. Hirshberg* v. *Cooke*, decided by the United States Supreme Court February 28, 1949 (17 U. S. Law Wk. 4223).

I have attached to this statement, by way of an appendix, some of the objections which the Legion entertains to the passage of the bill in its present form. Some of these are in addition to those mentioned by Commander Riter.

My comments regarding the bill are furnished from the standpoint of one who has had to work with the Articles for the Government of the Navy, as presently constituted, as a reviewing officer of court-martial cases.

I am mindful of the fact that the purpose of our Military Establishment is to be prepared for war and, if it comes, to fight it efficiently and successfully. To accomplish such a purpose the commanding officers must have discipline and a means of enforcing order. You can't have a debating society holding forth in battle or when a ship is under way.

The question is: Can discipline be enforced without thwarting justice as the American people have come to know the term? It is believed that this can be done and that the present bill goes much further toward accomplishing this objective than has been the case in the past.

The present Articles for the Government of the Navy were adopted, in the main, in 1862 (34 U. S. C., secs. 1200 et seq.). There have been minor changes in the articles since that time, but none of any significance. Thus, it will be seen that the situation is substantially different than that prevailing in the Army where great reforms have been effected as late as 1948 (Public Law 759, 80th Cong.).

The Navy has not been subjected to the volume of criticism that has been the lot of the Army for three reason, in the opinion of this witness. First, it is a smaller and more compact organization; second, because of smaller size it could be more efficiently administered from the legal standpoint; and, Third, its powers to execute, discharge, and dismiss offenders, were not as broad as those granted to the Army.

The American Legion invites attention to a resolution adopted by the National Executive Committee at its meeting in Indianapolis, Ind., May 3, 4, and 5, 1948. The resolution reads as follows:

"Whereas, there has been effected a merger of the armed services; and

"Whereas, under the system of military law and justice presently existing and immediately contemplated, there are or will be a Judge Advocate General in each of the Army, Navy, and Air Force; and

"Whereas, the American Legion, interested not only in the economical but also adequate and capable administration and disposition of legal matters, sees no reason for the maintenance of three separate legal systems in the armed forces: Now, therefore, be it

"*Resolved*, That the Congress of the United States before enacting legislation presently pending in bills presented by the Army revising the Articles of War and by the Navy revising the Articles for the Government of the Navy be called upon to instigate an investigation of the present system to the end that more equitable and just disposition of courts-martial cases be had; that past injustices in the said system may be remedied; that the preferential treatment of offices of the Regular services over officers in the Reserves in the matter of retirement benefits may be abolished; that preferential treatment of officers over enlisted personnel in regard to courts martial be abolished;

"That the boards for the review of discharges and dismissals set up under the GI bill and the boards for the correction of military records for the review of discharges and dismissals set up under the GI bill and the boards for the correc-

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on of military records set up under the Reorganization Act (Public Law 601, 0th Cong., sec. 207) be made to act in accordance with the will of Congress and ie people; and

"That consolidation of all legal offices of the armed forces may be effected id in the future be carried out under one head."

The position of the American Legion with regard to control of legal functions adequately set out in the foregoing resolution. It is presented here and now or the consideration of Congress.

It will be noted that in England there has been a merger of the Air Force and rmy Judge Advocate Generals' offices. A civilian has been put in charge.)ue to the recent enactment of the legislation which effects this change, the egion has been unable to look into the matter as deeply as it would like, but efers Congress and this committee to the London Letter in the American Bar ssociation Journal, page 75, in the January 1949 edition. The following statement appears therein:

"The position of the Judge Advocate General and the organization of his epartment has been under consideration for some time. The Secretary of State or War, Mr. Shinwell, stated on September 21 in the House of Commons that ie Judge Advocate will, in the future, be appointed on the recommendation of nd be responsible to the Lord Chancellor, instead of the Secretaries of State for Var and Air. The responsibility for acting or not acting on the Judge Advocate ieneral's advice in particular cases will remain with the Secretary of State oncerned.

"The Judge Advocate General's Department will be reconstituted so as to eparate the functions of pretrial advice and prosecution from functions of a udicial character. The former functions will be transferred to directorates in he Departments of the Secretaries of State for War and Air.

"The Judge Advocate General will also cease to be responsible for the collecion of evidence against, and the prosecution of, war criminals. These duties vill be carried out in the directorate of the War Office to which the Judge Advocate General's existing military department has been transferred.

"The reorganization took place on October 1, 1948, and a statement showing vhat are now the main functions of the Judge Advocate General has been circuated. He is to superintend the administration of military and Air Force law in he Army and Air Force, respectively, including the provision of deputies and egal staffs with the principal Army and Air Force commands abroad; provide nd appoint judge advocates at trials by courts martial and military courts eld in the United Kingdom and abroad; review the proceedings of courts martial nd of military courts held pursuant to royal warrant (prisoner of war and war riminals), including the tendering of legal advice on confirmation, review, or etition. In the event of its being necessary to quash the proceedings he will make ecommendations to the appropriate Secretary of State or commander in chief with this object. He will have custody of the proceedings of all courts martial and military courts and will give assistance to each Secretary of State in the formulation of any advice it may be necessary to give regarding the proceedings of courts martial and military courts for the trial of prisoners of war. In his capacity as legal adviser to the Secretaries of State for War and Air, he will advise them on general legal questions affecting the Army and Royal Air Force."

The remainder of the remarks furnished herewith are made without contemplation of this suggestion, but are based upon the code as proposed in H. R. 2498.

III. PERSONNEL

No code can be drawn which will eliminate all abuses. You cannot legislate changes in human nature.

Unlike the Army, the Navy has not now, and never has had, a corps of lawyers. Until the recent war it possessed a very small group of officers who were regular line officers, but who had been sent to law schools. Some of these men were admitted to the bar of various States. Some, if not most, never were admitted to any bar. Of all the Judge Advocates General of the Navy, no more than two, or possibly three, have been lawyers admitted to practice before the bar of a State of the Union after taking a bar examination. This group was augmented by the use of a few civilians.

During the last war this cadre of legally trained officers served mainly in combat or at sea and not in legal capacities. Most legal billets were filled by Reserve officers called for the purpose, or by retired officers who had had some legal training.

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After the conclusion of the war and because of the experiences of the war, t Navy, being cognizant of the vital need for the services of lawyers, accept many Reserve lawyers into the Regular Navy.

All these lawyers are now known as legal specialists. They are officers of t line. Under the present system it is believed that an officer of this classificati cannot attain to the position of Judge Advocate General of the Navy unless has had experience at sea and in command functions.

A line officer who cannot take command of a ship should not expect to progr rapidly or very far if he is competing with officers who have such qualificatio

Hitherto the practice was to send officers to sea for a tour of duty after th legal training. After that tour was completed, they returned to legal duties a tour in that capacity. This rotating system, in practice, afforded a man opportunity to do legal work about every other 3-year period of his career.

As a result of the present system, at the start of the last war there was a nec sity to create the office of the general counsel of the Office of the Under Secret of the Navy. This Office took over all contract and legal procurement functic of the Judge Advocate General's office. This Office still functions. In effect, creates two offices to carry on the legal work of the Navy. Justification creation of the Office of the General Counsel and its continuance lies in the fi that sufficiently able and qualified lawyers have not been and apparently are r now available in the Office of the Judge Advocate General to carry on the le business of the Navy.

In the highly complex field of law it is the belief of this witness that only o who devotes his full time to the law can hope to compete on an equal basis wi other legal practitioners.

The system presently in vogue is not changed in the proposed code. A parently it is anticipated that it will be continued. It is earnestly hoped th the Congress will set up in the Navy a system similar to the JAG Corps in t Army. Such a system at least insures that lawyers will do lawyers' work. will have the further advantage of enabling lawyers, to some extent, to be pr moted on their ability as lawyers. They will work as lawyers at all times duri their naval career and thus furnish the Navy with a type of lawyer qualified cope with those outside the service and with whom they must deal in carrying o their naval duties.

Such a system will have the further advantage, in time, of placing all the leg activities of the Navy under one head, instead of two, as is now the case. The will be no divided responsibility, and in all probability great economies c be effected as well as greater efficiency promoted.

The big business in which the Navy is engaged requires the acquisition and u of the best legal brains available. Unless possessors of such qualities can hop to rise to the top, there is no incentive offered them to enter or remain in t Navy.

IV. JURISDICTION

The American Legion calls attention to the expanded jurisdiction conferre upon military courts in the proposed code. It may be that such is necessary. I atomic warfare comes, there is the distinct porbability that within a few hour after the commencement of hostilities, all activities in America would be subjec to martial or military law. All people would then become subject to the propose or a similar code. At least military commissions would take the place of civi courts.

There has been of late a seemingly increasing inclination to widen the jurisdic tion of military authority. In the past, Congress has zealously guarded the distinction between the civilian and the military indicated as essential by the writers of the Constitution.

The military has not always been content to remain within constitutional or statutory limits in this regard. Witness the cases of *Duncan* v. *Kahanamok* (327 U. S. 304); *United States ex rel Hirshberg* v. *Cooke* (17 U. S. Law WK. 4223 *Rosborough* v. *Rossell* (150 F. 2d 809).

The American Legion is certain that the majority of those in the military and naval service intend to carry out their assigned tasks with the American spirit in mind and within limits imposed by statute and the Constitution. However, wherever an authority is granted, there will always be some who will take advantage thereof and abuse it; some through ignorance, and a smaller number through arbitrary willfulness.

With this in mind, it is the position of the Legion that the proposals in H. R 2498 in regard to jurisdiction should undergo the close scrutiny of all concerned before passage.

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may be that with its better facilities for obtaining information, because of
l conditions, and possible defects in the present codes, the Congress will
ve it proper to enlarge the jurisdiction as proposed or confer it to a greater
t.
order to provide for temporary situations, and to correct the present codes,
ver, we should not surrender so much of our liberties that our form of govern-
may or will be endangered.
Congress, in its wisdom, decides it is necessary to widen jurisdiction, it is
ved that professionally trained lawyers should administer the code. There
almost vital necessity to provide an adequate and foolproof system of review.
risdiction is to be enlarged, it behooves us to enlarge the powers of the boards
are to review the actions of military courts and not so to circumscribe the
ities of such boards that they are or can be rendered impotent in time of
rgency or hysteria.

V. REVIEW

he review procedures in the proposed bill are a long advance. It will be noted
n the comments of the draftsmen that many of the procedures set up in this
ect are entirely new to the Navy.
he Articles for the Government of the Navy make no provision for boards of
iew. Late in World War II there was set up in the Office of the Judge Advocate
neral one such board. Its functions was to review such cases, with a few excep-
ns, which the officers charged with the duty of primary review in said Office
e convinced should be set aside. Said board rarely handled a case which had
n passed as legal.
When court-martial cases arrived in the Office of the Judge Advocate General,
h was read by a single officer. If he passed it, the case was sent to the Bureau
Personnel for action on the sentence. No other legal review was had. On the
ier hand, should such officer determine the conviction was improper and seek
set it aside, the case was then reviewed by each of his superiors. If any superior
agreed, the case was passed as legal—sometimes, when passed by an intermedi-
superior of the first officer, the Judge Advocate General never saw the case.
nat officer whose fitness reports were to be marked by the intermediate officer
uld have the temerity to go over his head and appeal to the Judge Advocate
neral?
Under the system then, and even now, in vogue the officer who found or finds
rors of law in a number of cases caused and causes a slow-down in the work
rned out. A commanding officer, anxious to make a record for production, is
t fully appreciative of the work of one who, because of his belief that legal vio-
tions have occurred, insists on writing an opinion. Such a reviewing officer,
ho in private life might be commended for his meticulous care and devotion to
ty, might not receive as satisfactory a fitness report as one who, because of
ziness, negligence, or ignorance, passes a case without writing an opinion.
In this connection it is believed that some figures which are to be found in the
inority report of the Ballantine Board appointed by the Secretary of the Navy,
hich reported to the Secretary of the Navy on April 24, 1946, will be of interest
) the committee.

igures

In fiscal year 1945, 27,861 general courts-martial cases were received in the
ffice of the Judge Advocate General of the Navy. Only 60 of these cases were
et aside in toto (0.21 percent) by that Office. Sixty-nine more were set aside in
oto by convening authorities (0.24 percent). Thus, in the entire Navy, 129 cases,
r 0.4 percent, of general courts-martial trials were set aside in toto. The total
umber of cases resulting in acquittals, reversals, nolle prosequis, and in which
leas in bar were sustained, were 682, or 2 percent.
The annual report of the Director of the Administrative Office of United States
Courts for 1945 under the report of the Judicial Conference of Senior Circuit
Judges indicates that 41,653 defendants were indicted in the year 1945. Of these
34,117 were convicted, and 7,536, or 18 percent, were not convicted. Of this
7,536, 6,369 were dismissed and 1,167 acquitted. The same report shows that
in appeals in criminal cases in Federal courts, 18.6 percent of the convictions
considered in 1945 were reversed.
In short, these figures show that naval courts, composed of legally inexperienced
personnel, in considering cases handled by men also generally inexperienced or
improperly chosen for their duties, freed only 1.9 percent of the accused brought
before them, as compared to the 18 percent in Federal courts, presided over by

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lifetime judges considering cases presented by professional lawyers, a ratio of 10 to 1.

In reviews by convening authorities and the JAG office, 0.4 percent of general courts-martial cases were set aside in toto. This must be contrasted with the 18.6 percent of cases set aside by the Federal courts, a ratio of 46½ to 1. If we assume for the sake of argument that 90 precent of the Navy cases were either pleas of guilty or cases where an appeal ordinarily would not be taken, and use only the remaining 10 percent, on the basis of review we find the ratio is still 4½ to 1.

Today the situation has been somewhat improved by the use of "panels" for the review of certain cases. The panels, however, are far removed from the Judge Advocate General, and the possibility of one man overruling the work and views of several still remains. Their use has no legal sanction in that they are not required by law and could be abolished if a Judge Advocate General desired to take such action.

Such a system should not exist and an attempt is made to eliminate it by the proposed code.

It is the belief of the American Legion that the dangers presently and formerly existing have not been effectively prevented in H. R. 2498. The possibility that, in time of emergency, or manpower shortages, real or imagined, the former practices will be reestablished should be effectually barred.

Former Chief Justice and President Taft once said when discussing civilian courts: "It is not only important that justice be done; it is equally important that the public believe that justice is being done."

The people in America have the idea that the Military Establishments are controlled by civilians. The Commander in Chief and the heads of our defense, military and naval departments, are civilians. When our youth is drafted into the service, it is a board consisting of civilians which determines the fact.

However, in cases of those who get into trouble in the armed services, there is no effective civilian control over the type of release the alleged wrong-doer receives.

A man may receive an administrative, bad-conduct, or dishonorable discharge. It is the belief of the American Legion that all such severances from the service should not be effected until a board of civilians has passed upon them.

Many military men have no conception of the effect of one of these discharges. The witness has heard a marine colonel state that a bad-conduct discharge was no more serious than would be the case if a boy after working for some time for an employer, was refused a letter of recommendation upon leaving his job.

We know such is not the case. Many boys have been denied the opportunity to go to school, find employment and enjoy life as others do for an indiscretion committed in the military or naval service, as a result of which they received discharges other than honorable or under honorable conditions.

Generally in civilian life, when one has been convicted and serves his sentence, he has been deemed to have paid his debt to society. The stigma of a bad-conduct, or dishonorable, and some types of administrative discharge follows a boy through life. Such discharges, etc., should only be given if thoroughly deserved.

A review by an officer whose promotion, even career, depends upon his relations to and with his superior officers cannot, in the nature of things, be that type of impartial review which should be afforded to maintain the confidence of the American people that when their boys are drafted or otherwise enter into military or naval service, they will get a fair deal.

When a case gets to the review stage the question of the deterrent effect of the sentence upon them, tempted to commit the same acts and the consequent aid and assistance to the maintenance of discipline, is absent. Generally, at least insofar as the Navy was concerned in the last war, the review takes place months after the conclusion of the trial, and the shipmates of the offender have shipped out or are far removed from the place where the offense took place.

Thus it cannot be successfully and convincingly argued that a proper civilian review would handcuff the command in enforcing discipline.

My comments, in the appendix below, relative to the proposed article 67, are applicable here.

Review by such a group would have a deterrent effect on some commanders. If it is contemplated that wider jurisdiction is to be granted to the armed services, the power and authority of this council intended to be set up should be substantially broadened from that given it in the proposed code.

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VI. APPENDIX

Discussion here will be confined, in the main, to matters not touched upon in statement made by Commander Riter. An attempt will be made to discuss various articles in their numerical order and as they appear in the proposed e.

Article II, section 1, indicates that persons are subject to the code who are ed, etc., "* * * to duty in or for training in, the armed forces, from the es they are required by the terms of the call, draft, or order to obey the ne; * * *."

nstead of making this code consistent with section 12 of Public Law 759, it is ieved this section nullified the latter act.

t is not believed that, until a person is actually sworn into the armed forces, a itary court should have any jurisdiction over him for offenses which it is ieved this clause is attempting to anticipate and provide for. Until a person ctually inducted into the armed forces, he remains a civilian, and he should be d, if he has committed an offense, by civilian courts. During the past war, the il courts handled this type of situation adequately.

Article II, section 3, provides that Reserve personnel who are voluntarily on ctive duty training, authorized by written orders are to be subject to the code. Without further implementation and clarification it is believed that this tion as worded is far too broad to accomplish what is apparently in the mind he draftsman. There is no question but what persons in the Reserve who are ng expensive equipment of the armed forces should be subject to such a code offenses arising out of the use of, or while they are using, the said equipment. written, the clause allows too great latitude and creates too much uncertainty be allowed to stand.

Article II, sections 11 and 12, indicate additional persons, mostly civilians, o are to be held subject to the code.

t is realized that presently the armed forces have the power to court martial ne of these individuals. It is the position of the American Legion that broadng the jurisdiction to try civilians, as is attempted here, should be very charily ended. If the Congress believes that the armed forces should be allowed to these people under such a code, the American Legion would not raise too enuous an objection. We believe, however, that any such right should be sely restricted and circumspectly granted.

Article III (a). Jurisdiction to try certain personnel:

"Reserve personnel of the armed forces who are charged with having committed, ile in a status in which they are subject to this code, any offense against this de may be retained in such status or, whether or not such status has terminated, ced in an active-duty status for disciplinary action, without their consent, t not for a longer period of time than may be required for such action."

It is suggested that this section should have a definite time limit inserted for e reason that, as drawn, it creates the possibility of persons being confined thout trial for substantial periods of time.

"Article IV (b). If the President fails to convene a general court martial within months from the presentation of an application for trial under this article, the cretary of the Department shall substitute for the dismissal ordered by the esident a form of discharge authorized for administrative issuance."

This section as written provides to great latitude and should be furnished with ldditional safeguards in order that, if a court martial is asked for, it can be had. s written, should the application become lost or pigeonholed and never reach e President within the 6-month period allowed, the service involved could lministratively discharge the officer.

In general, with respect to all dismissals not only with regard to officers, but so as to enlisted men, it is the position of the American Legion that at the very ast, if there is necessity to administratively discharge and a man is to be disharged administratively, he should be given a hearing before some board set up or the purpose. We have not been furnished with figures, but complaints which ave come to our attention indicate that literally thousands of persons received lministrative discharges from the armed forces during the last war. Many f these allegedly received no hearing before any type of tribunal, board, or court.

It is not believed that many officers have a true conception of what ultimate ffect this type of severance from the armed services has upon the future of the erson dismissed. Any severance from the service, other than an honorable dishiarge or similar action, has deprived boys of the opportunity to go to college, o obtain employment, and generally has created situations which, in many in-

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stances, have been grossly unfair. Certainly such procedure is not in accord with American principles of justice.

Article 15 (b) provides that the Secretary of a department may, by regulation limit the powers granted under this section generally.

Section (c) provides that the Secretary of the Department may, by regulation specifically prescribe the punishments authorized by the section.

It is believed that the powers and punishments should be subject to the regulation of the President or at least the Secretary of National Defense. One of the complaints leveled at the armed services was the wide disparity in punishments even in different commands of the same service. Passage of these sections will not remedy, but certainly create additional basis for complaint. If the powers and punishments indicated in this article emanate from one source, such action will insure uniformity of punishment for the same type of offense and a uniform exercise of powers throughout the armed services.

Article 15 (d) provides for an appeal through proper channels, but indicates that person may be required to serve the punishment adjudged in the meantime. In practice, it is believed that this section will prove to be a nullity. Possibly it will serve to clear the record of an individual, however.

Articles 22 through 29 discuss the appointment and composition of courts martial.

It is greatly feared that the matter which has caused the greatest amount of discussion since the close of the last war; namely, control by command over the functions of the courts, has not been remedied by the proposed sections. This aspect is emphasized by article 27, wherein it is provided that for each general and special court martial the convening authority shall appoint trial and defense counsel, etc. It is impossible for me to conceive that a person represented by designated counsel, from the staff of the command which has determined he is to be tried, will be felt to have received the vigorous defense which the American system has indicated one can expect in our courts. Even if the person is most vigorously defended, such a set-up is suspected and, even under the most enlightened administration, if a conviction ensues, criticism will always follow.

The question of availability exists. See comment under article 38 on this point.

Article 29 provides for absent and additional members. The procedures suggested in paragraphs (b) and (c) of said article, for appointment of additional members after the absence of certain members is not conducive to confidence that the conviction, if any, handed down by such a court would be correct. It is the position of the American Legion that once trial has started before a court, if, for any reason, absences among the membership accrue, the remaining members of the court should proceed to a finding. Provision can always be made in regard to general courts martial for having sufficient members appointed to the court to take care of the possibility that a member may not be able to fulfill his duties.

Article 34 (b) reads as follows:

"If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made."

Without additional clarification this clause as it stands is objectionable. If the intent is to allow changes in the charges and specifications if clerical and typographical errors appear, there would be no objection to this section, except that it probably would be simpler to state that that type of error is contemplated and is to be corrected. However, when power is given as it apparently is herein to make changes in the charges and specifications to make them conform to the evidence it is felt that such power in the hands of unscrupulous persons can lead to gross abuses and certainly it is not believed that the committee would authorize a law of this nature. Placing curbs on this power in a manual is not a sufficient guarantee against abuses. The curbs should be specifically set out in the code.

Article 37, which deals with unlawfully influencing the action of the court, has been dealt with at length by Commander Riter. In addition to the comments made by him with which this witness agrees, it is noted that no penalty for violation of this article is set out in the article itself. The notes indicate that article 96 makes violation an offense. It probably would be more effective to indicate in the article itself that it is an offense.

In article 38 (b) it is provided that an accused shall have the right to be represented in his defense among others by military counsel of his own selection if reasonably available.

The provision of reasonable availability has been the cause of most of the criticism which has come to the attention of this witness with relation to the

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nishing of counsel, by the command, to a defendant. If counsel has been reasonly successful in defending culprits, his availability ceases or, in some instances, has been made what is in this code called trial counsel, and thus obviously has n unavailable to defend cases. It is believed that some effort should be made umanly possible to remove this restriction, not only in respect to this section, t wherever it appears in other sections and articles of the code.

Article 43 deals with the statute of limitations. Section (f) (3), if it is intended be confined to military personnel in its application, is probably proper; but if s intended by this means to enlarge the jurisdiction to make civilians responsible to acquire jurisdiction over them, it is not believed that the section has any ce in a military code of this nature.

Article 44 (d) deals with former jeopardy. In addition to what has been said Commander Riter, the question arises as to what happens if a finding of "not ilty" is entered. The article, as written, deals only with findings of guilty. In opinion of this witness, this section, after the first semicolon in line 23, on ge 37, should be stricken.

Article 48 deals with contempt. While it is believed that a court of the type licated or a commission should have the power to punish military personnel ilty of contempts, this section is so broad that it gives latitude for abuse. If nsel who is a civilian appears before such court or commission, he can arbitrarbe held in contempt. It is believed that a more satisfactory section, at least regard to civilians, could be drawn if certification was made by the military urt to a United States attorney as is provided in article 47 (3), (b), and (c). should be noted that the proposed A. G. N. article 35 makes such a provision.

Article 49 deals with the use of depositions. It seems to the Legion that this tion loses sight of the ancient right afforded in English and American justice of e right of confrontation of an accused by his accusers.

It is believed that no greater latitude with regard to the use of depositions ould be allowed in the proposed code than is presently allowed under the rules criminal procedure presently in effect in the United States courts.

In this connection, in the present naval practice, a provision exists for the use depositions, but, if used, the sentence given is not to exceed one year. In actice in the Navy during the war, if a man was charged with three offenses, e Navy felt that it was justified in using depositions and in sentencing, and apoving a sentence, in such a case for the term of 3 years.

It seems that the military services were able to get along from their inception ntil comparatively recent times without the use of depositions to convict leged guilty parties. In these days of airplane and other means of rapid transrtation, the necessity for the use of depositions seems to be less apparent than er.

Article 52 deals with the number of votes required for a conviction under rious circumstances. In each instance but one, there is a qualification indicave of the fact that the required number of votes is to be determined based upon e number of members present at the time the vote is taken. It is not believed at this qualification is necessary. It is the position of the American Legion that l the persons who sat upon the court should be present at the time of the vote. uch requirement will eliminate any possibility of criticism.

Article 62 (a) is not believed to be proper. Generally speaking, when the arges against the defendant have been dismissed in a criminal trial, such tion is tantamount to an acquittal and, in most jurisdictions, a retrial cannot e had. This section, as written, allows the convening authority two bites or ore of the apple and leaves wide latitude for abuse. Section (b) under said rticle also leaves room for abuses in the way of "doctoring" records and, unless afeguards of a substantial nature can be and are inserted in this section, it is not elieved that the power should be granted.

Article 63 provides for rehearings if a convening authority disapproves the ndings and sentence of a court martial. It is assumed that this gives a conening authority power to order a rehearing in a case where an acquittal has been eturned, or that, in a case where a man has been charged with murder, if a manlaughter conviction is returned, after voicing disapproval the convening authority an return the record to the court. In the code, as written, and with the control hat the convening authority has over the courts and the officers thereof, this ype of section countenances continuance of the abuse complained of so frequently n the last war to the effect that convening authorities ordered the courts to ind as he desired. It is believed that, if it is found necessary to have such a provision, section (b) under said article could be more simply stated if it were unequivocably indicated therein that there was to be no rehearing if an acquittal esulted upon the first hearing of the charges.

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Article 66 provides for reviews by boards of review. The Navy has never had anything comparable to this procedure. In section (b) of the article, there is indicated the types of cases which are to be referred to such boards. It is felt that the type of cases such boards are to consider should include cases where confinement for 1 year is assessed, so that in line 8, on page 53, it should indicate that the confinement should be "* * * for 1 year or more" rather than "for more than 1 year."

Section (e) in said article has been commented upon at length by Commander Riter. This witness concurs in his views. It is earnestly hoped that the Congress will not pass any law which includes such a provision.

Article 67 sets up the Judicial Council and has been considered by Commander Riter. This is unquestionably a long step forward and may be the means of eliminating many of the abuses and complaints which have plagued the military with reference to court martial. It is believed that the tenure of the members of the council should be firmly established by legislation. The appointment should be by the President, by and with the consent of the Senate. The provision that the members be admitted to practice before the Supreme Court of the United States means very little, the requirements for admission to that Court being solely that one has been admitted to the bar of the highest court of a State. Another criticism is that the type of cases which the said council is to review are, in the opinion of this witness, too limited. It is my firm conviction that if adequate civilian review is had of every case in which a discharge, other than honorable or under honorable conditions, or a dismissal from the service, or in cases where sentences of death or of 1 year or more have been assessed, there will be a substantial lessening in the number of complaints against the type of justice afforded in military courts. I would be tempted to go so far as to say that a board of the type indicated, if established with sufficiently ample powers, could almost be said to eliminate the necessity for any other reform in the court-martial system. With sufficiently broad powers, the boards of review provided for otherwise in this code would be unnecessary.

For these reasons I repeat that the provisions of this section providing for the cases which are to be considered by such a board are too limited.

Article 69 provides for review of cases other than those previously indicated. It merely indicates that such records shall be examined in the Office of the JAG. If previous sections of the proposed code, particularly article 66, section (b) are passed in their present form, the instant section creates the possibility that a person not a lawyer would be passing upon a record of conviction in which a sentence of 1 year had been assessed. In the Office of the JAG of the Navy, it has long been the practice to have law students review court-martial records. It is believed that only persons trained in the law and members of the bar should be allowed to act in this capacity.

It will be noted that only if the findings or sentence are found unsupported in law will records be referred to a board of review and that, if so referred, there will be no further review by the Judicial Council. These limitations are not compatible with the type of review that should be had. In effect, if a law student tries to set a case aside, then and only then will the case be reviewed by trained lawyers. If the untrained individual (in the sense that he is not a lawyer) passes the case it is assumed that there will be no further review.

The provisions of article 70, providing for appellate counsel, are satisfactory in so far as Government counsel is concerned. It constitutes a forward step in other respects. It is not believed, however, that the JAG should appoint the appellate defense counsel under the system contemplated by this code. It would be fairer and more consonant with American principles if such counsel were appointed by the Judicial Council.

Article 71 provides limitations on the execution of sentences extending to death or involving a general or flag officer. The proviso with regard to death sentences is laudable. That part relating to general or flag officers is a departure from the present Articles for the Government of the Navy. Presently no officer may be dismissed from the service until his conviction and sentence has been approved by the President. This witness sees no reason why there should be any departure from past practice of a restriction as indicated.

Section (b) of said article is also a departure from established practice, at least in the Navy. It is a departure which does not seem to be warranted. Technically, section (c) is a departure from present Navy practice. Now at least technically, the Secretary of the Navy must approve the type of sentence indicated herein. A danger exists in this section in the limitation or proviso that the sentence must be suspended. There does not appear to be any real reason why a change from the present system is warranted.

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Article 73 has been previously discussed by Commander Riter, with whose mments I agree.

Articles 74 through 134 list the punitive articles. Many of the punishments ailable to a court listed in these sections are drastic. It is the view of the merican Legion that the Congress should spell out the limitation of punishment d should not leave such a serious matter to the caprice or action of a court which any times may be unaware of the seriousness of the offense charged.

Article 94 indicates that a person under certain circumstances who "creates y violence or disturbance is guilty of mutiny" and is liable to be punished by ath. In the opinion of this witness, the quoted words should be stricken from is section for the reason that much too wide latitude is given under the section written. If a person became involved in an altercation in a public street, and this section is literally interpreted, he could be held to be a mutineer.

Article 106 refers to "lurking." This is much too broad a proviso in scope and nishment for such an offense. If the section was meant to convey "lurking d acting as a spy," etc., rather than "lurking or acting," etc., there would be o objection, and the American Legion believes there is necessity for such a atute.

Article 107, as written, should also make provision that any person who prepares r makes or directs the preparation of a statement of the nature indicated, in ddition to the one who signs such a record, should be punished as indicated.

Article 118, section 3, as written, provides too much latitude to be passed as ritten. As this witness sees it, a drunken driver could be convicted of murder nder this section.

Article 140 provides for delegation of the President's authority and for the ubdelegation of such authority. This section is much too broad and in practice t is feared will result in delegation of authority, specifically invested in indi- iduals in the code as written, to too great an extent. In the notes furnished by he draftsman of the bill, it is indicated that this is a provision of law already xistent. Such is not believed by this witness to be the case since it will be noted hat the reference is contained in title I of Public Law 759, dealing with selective ervice, whereas the military-law aspects of said law are incorporated in title II.

Mr. BROOKS. Congress is about to go into session.

We can continue for a while, but the time that we can continue will be limited due to the fact that this committee has two bills upon the calendar for consideration today. I just suggest that, with deep regrets.

Mr. FINN. If it pleases the committee, I do not intend to read this statement. But I do want to make one comment with reference to it.

On page 10 and 11 they have included the article 67 in the proposed code. It should be deleted and it should not be a part of my statement.

Mr. BROOKS. If it is all right with the committee, we can run to, we will say, about 11:30.

Mr. ANDERSON. All right.

Mr. BROOKS. And we better plan to adjourn by that time, as there is an appropriation bill ahead and our bills will come up next.

Mr. FINN. I appreciate the committee's position, except the difficulty is that I had so many things to discuss here. I had figured I might have a full hour to do it and I laid my plans accordingly.

Mr. BROOKS. Well, we can meet tomorrow and conclude tomorrow. But, of course, it is not due to the position of the committee, in framing the legislative schedule on the floor of the House. We are helpless there to change the situation.

Mr. FINN. I understand that perfectly.

Mr. FINN. Now on the question that the chairman just asked with relation to one Judge Advocate General, at the May meeting of the national executive committee at Indianapolis there was passed a resolution which is contained on page 3 of my statement in its entirety and in that statement, after preambles and so forth indicating what

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the position of the Legion is with relation to all phases of military justice, including discharges, dismissals, boards for the review of discharges and dismissals under the GI bill of rights, and so forth. there is the conclusion that the Legion is in favor of consolidation of all legal officers of the armed forces and that it may be effected and in the future carried out under one head.

Now I appreciate that, perhaps, is a function which is perhaps a basis for additional legislation and perhaps it cannot be considered at this time, but I want to leave and I think the Legion wants me to leave with this committee the impression that we are strongly in favor of that procedure.

We are all the more strongly in favor of that procedure because now the Navy has no such corps, that is no such system whatsoever.

Mr. ELSTON. You contemplate Navy officers trying men in the Army, and vice versa?

Mr. FINN. I cannot see that it would make much difference, sir. The offense that is charged would be the same whether it is the Army or the Navy.

I would say this, frankly: In my statement I have also referred to the London letter to the American Bar Association which appears in the January issue of the American Bar Association Journal, which calls attention to the present system in England, where they have combined the JAG in the Air Force and the Army.

They have not as yet put the Navy into that system. And I have set out there insofar as we are at the present able to ascertain the present system in England with relation to court martial.

As was suggested here yesterday to the committee the Lord Chancellor of England now is in charge of all court-martial functions—a civilian head. The judge advocate general is in his office and reports to him.

Mr. DURHAM. That would carry out further the unification act, certainly.

Mr. FINN. Yes, sir; that is our position in the Legion.

Mr. BROOKS. You are not recommending that the Supreme Court be head of the unified Judge Advocate General's Department, are you?

Mr. FINN. No, sir. And in my comments with relation to this judicial council, I feel I will touch upon some of those positions if I have time.

The suggestion here is emanating from me as an officer who for 33 months reviewed cases in the Office of the Judge Advocate General—and I may say that I was very, very well treated in the Office of the Judge Advocate General, both by Admiral Russell, Admiral Colclough, and Admiral Gatch, under all of whom I served.

You cannot draw up any code that is going to eliminate abuses and you cannot legislate changes in human nature. However, as long as you have a system such as you have in the Navy where you have legal officers or legal specialists as they call them, and no specific corps, you are always going to be confronted with the fear that officers have, that their actions will not meet with the approval of the person who is going to mark their fitness report.

Now that is the thing which permeates this entire system and which is not apparent on the surface. Now I have seen officers in review sections who are mortally afraid of their commanding officers.

That is a system which should be eliminated insofar as it is practicable.

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Mr. DURHAM. Once marked, they are never changed.

Mr. FINN. Correct, sir.

Now the main things that I wanted to talk about are these. There are three things: One is the jurisdiction. Another is the personnel. The third is the reviews. I speak of jurisdiction because I note, and I think the committee will note, that in this bill the jurisdiction of naval and military courts generally has been substantially enlarged.

Now it is for this committee and for the Congress to determine whether or not the American people will want that sort of thing. If we have an atomic war, which from all indications we will have in the future, there will be immediately declared martial law in this country.

We will have military commissions acting upon the lawyer. And bear in mind that you cannot, as I see it, by legislation even under the Constitution impose strictures within which the military will confine themselves.

Witness the case of Duncan against Kahanamoku, which was decided by the Supreme Court of the United States, where during the war the Army incarcerated a man who was a stock broker for alleged embezzlement and kept him in jail for 3 years even though the civil courts were functioning. The Supreme Court said that that was wrong.

Witness this Hirshberg case that was decided only a week or so ago where a man had been honorably discharged from the Navy and had subsequently been brought back because he had reenlisted and tried by a naval courts martial. And the Supreme Court set that case aside.

So when you are dealing with jurisdiction and you are going to enlarge the scope of the jurisdiction which you are giving, you should do it, I believe, very carefully and very circumspectly and, if in the wisdom of Congress it is felt it is necessary, the American Legion would have no real objection to that, provided that when you set up your boards of review you give them wide and broad powers to review the facts and the law.

Otherwise I am very fearful for our form of government under this system.

Mr. ELSTON. The board of review under the bill does review the facts. It is the Judicial Council that does not review the facts.

Mr. FINN. Correct, sir; but the board of review, bear in mind, as I understand it, is to be generally consisting of officers, all of whom are generally or at least insofar as the one board of review which has been set up in the Navy is concerned, subject to one head who marks their fitness reports. And if he does not agree with what the board does, then what?

Mr. PHILBIN. Is it your view that the Judicial Council should also review the facts as well as the law?

Mr. FINN. Correct, sir, absolutely. And I believe that the Judicial Council should have its powers so broadened that it will be able to review the facts and the law. And I believe that if they are civilians that is the only way that you will be able to get away from this command influence that has been talked about on the review level.

Now I do not know anything about the command influence on the trial level.

Mr. ELSTON. Do you not think you would get away from that if you had a separate corps, such as a separate Judge Advocate General's Corps in the Army, and they select the board of review and the board

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of review review the facts in the case? Does that not remove it from command influence?

Mr. FINN. No, sir; I do not believe so. For example, suppose you and I and Mr. Smart here are members of a board of review. I do not know exactly how it functions in the Army, but I know that perhaps the three of us will be subordinate to an officer who is in charge of all the boards of review.

Now, if you and Mr. Smart here and I adopt a position which is contrary to the position taken by that man who is in charge of all the boards and he does not agree with us and we insist that we are right and we fight our position to a conclusion and we incur his wrath, we will never get anywhere in the service thereafter.

We will get a bad fitness report and every time we come up for promotion that fitness report will be in front of those boards that consider our promotion. So I say I am very fearful, sir, at the very least, that that is not the effective way of giving the type of review which I consider to be necessary.

Mr. ELSTON. Well, the point I am making is if they are all selected in the Judge Advocate General's Department.

Mr. FINN. Yes, sir.

Mr. ELSTON. A separate corps.

Mr. FINN. Yes, sir.

Mr. ELSTON. They certainly would be removed from any command influence, except the influence possibly of the Judge Advocate General himself.

Mr. FINN. You have command there, too, sir.

Mr. ELSTON. You have command, but you only have command so far as law enforcement is concerned.

Mr. FINN. Correct, sir.

Mr. ELSON. And the administration of justice is concerned.

Mr. FINN. Yes, sir. But you still have the fact—and may I digress a moment by making this statement——

Mr. ELSTON. Well, you think that the Judge Advocate General would be apt to have an opinion about any case which he would try to impose on the board of review?

Mr. FINN. No, sir.

Mr. ELSTON. That he himself had nothing to do with the trial of the charges, the preferring of the charges, and the accused was not at any time under his command?

Mr. FINN. I do not exactly say "Yes" or "No" to that, sir. But I do know that there is the possibility existent. Now I do not say that it is always exercised, but I say there is the possibility existent that a Judge Advocate General—not the ones whom I know, but there is the possibility that one can take issue with an officer to such a point that that officer will not be able to progress in his career.

And by giving that officer poor-fitness reports it can be done. Now I say the only way you can eliminate it is to have civilians review these cases where you give a man a discharge of a year or more or where you give him an unconditional discharge or any kind of discharge which is otherwise than honorable or unhonorable conditions.

If you let a man out of the service under these undesirable discharges the type that is handed out in the service, they should have a review of their cases by a civilian board.

Mr. ELSTON. You are referring now solely to what is called the Judicial Council?

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Mr. FINN. Yes, sir.

Mr. ELSTON. You would not want the boards of review in the Judge Advocate General's Department to be civilians, would you?

Mr. FINN. No, sir. I have stated in my statement, if I may say to you, Mr. Elston, that in my personal opinion if you created these boards called the Judicial Council and gave them wide enough powers it would almost be unnecessary to change any of the whole military system because that board would exercise a function which is civilian in character and which is more consonant with American principles than you could possibly have when officers administer it.

Mr. ELSTON. Of course, there is no one more in favor of a complete and thorough and fair review than I am.

Mr. FINN. I know you are, sir.

Mr. ELSTON. But I go back to the jurisdiction of the United States Circuit Court of Appeals in criminal cases. They have the authority only to review on questions of law.

Mr. FINN. Yes, sir.

Mr. ELSTON. Now, I would just like to have your viewpoint about why you should make a distinction between a case in the civil courts and a case in the military courts?

Mr. FINN. Yes, sir. I do that for this reason, sir. If I am a young boy of 17 years of age, and I go before a draft board, a group of civilians just like you gentlemen say, "You are the boy that is to go in the service tomorrow."

Now, that induction into the service is solely a civilian proposition. Now you go into the service under civilian aegis, let us say. But do you come out under civilian aegis? Does anybody that is a civilian see what has happened to you when you have been in service?

And suppose you have gotten an undesirable or a dishonorable discharge? It seems to me—and the Legion agrees with this position—that that type of person should have a review by civilians of the discharge which he received.

May I say to you—and I think I have included it in the statement—I talked to a marine colonel who is in charge and has been for a considerable period of disciplinary functions in the Bureau of Naval Personnel, on one of these boards that I served upon, and he said, "Do you know what a bad-conduct discharge means?" and I said, "I do." He said, "All it means is that if I work for the General Motors Corp. and I quit my job they don't give me a letter of recommendation to my next job."

Now that is not the attitude of most people in the service, but the point that I am trying to bring out is that we should eliminate the possibility that a person of that type can with those ideas discharge a person without a review by the same type of people that put him into the service; the civilian, for example.

Now that goes into the question of jurisdiction furthermore. You are enlarging your jurisdiction. You are making naval officers or Army officers who are Reserves subject to this code, under certain circumstances.

You also make the boy who is drafted, for example, subject to it. I believe until he holds up his right hand and swears that he is going to defend the Constitution and gets into the service that there should not be any trial of that boy by a court martial.

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But this bill provides for it. And I think that the provisions—which I think is article 2, section 1 or 3 of the proposed code—has the possibility existent in it that that type of boy will be tried by a court martial.

And I do not believe it should be done. I believe that civil courts during this past war took care of that situation adequately and well.

Mr. BROOKS. Let me ask you this, Mr. Finn.

Mr. FINN. Yes, sir.

Mr. BROOKS. You suggest a review all the way down the line of both the law and the facts?

Mr. FINN. No, sir; I would not be too particular about that, provided at the end of the line, sir, in this Judicial Council, where the civilians sit, you would have that type of review.

Mr. BROOKS. Well, of course you meet the situation there that the Judicial Council met long after the trial and away from the witnesses and not have a chance to pass on their credulity or credibility?

Mr. FINN. If you please, sir, during the war—I cannot give you accurate figures, but it seemed to me that the average time that elapsed from the date of the end of the trial to the time the cases were reviewed in the Office of the Judge Advocate General was at least 60 days.

Sometimes it was months—6 months. The argument that you are so far removed from the situation by the time it gets to the Judicial Council to me does not mean a great deal for that reason, that the boards of review do not get the cases until a very substantial time has elapsed.

Now I cannot very well express myself any more forcibly on this question of review by civilians at the end of the line. And as I stated before, if civilians put us into the service civilians should look over the type of discharge we get when we get out of the service.

Mr. BROOKS. Mr. Doyle wanted to ask you a question.

Mr. FINN. Yes, sir.

Mr. DOYLE. Therefore, is it not imperative that there be a complete record of the facts all down the line so that the last board of review—the Judicial Council, say—no matter when it sits, shall have the total factual picture before them?

Mr. FINN. Absolutely correct; yes.

Mr. DOYLE. Am I in error? Are there not a number of cases in your experience where immature boys when they went into the service were given dishonorable discharges for offenses which so far as civilian law was concerned would be inconsequential?

Mr. FINN. That is one of the difficulties I had when I was in the Office of the Judge Advocate General, sir. With the average run of purely military offenses and what happened in the military I have no quarrel whatsoever.

If a boy is absent, and he misses his ship, and he causes some other boy to lose his life, that is one thing; but, when you get into the case where you are trying a man for burglary or rape or housebreaking and things of that sort, where the boy could probably get an entirely different type of trial if he were not in the uniform, that is where I had my worst moments, if I may so express it.

Those are the types of cases where the purely, it seemed to me, military mind had no real, true comprehension of what the elements of the offense that was charged consisted of or what they amounted to.

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And all too prevalent was the idea that the boy had to be tried because it was a deterrent to the other boys. And on that score the deterrent factor, so far as I was able to observe, was not present, because by the time the boy was tried the rest of his shipmates were over in the South Pacific and he was here in the United States.

So, in my poor fashion, I was unable to understand where the deterrent factor entered into that situation.

Mr. PHILBIN. You are not asking for a trial de novo before the Judicial Council?

Mr. FINN. No, sir.

Mr. PHILBIN. You want merely a review of the facts on the record as it will be presented?

Mr. FINN. Yes.

Mr. PHILBIN. Following the trial before the trial courts and the other boards of review that are set up by this legislation?

Mr. FINN. That is right, providing everything is expressed on the record so they can see it when they get it.

Mr. BROOKS. What would you think of approaching your problem this way, by permitting the accused in cases which are nonmilitary, more or less, in their nature and which are offenses against society generally to be tried by the Federal court in time of peace?

Mr. FINN. If I may speak for myself, sir, and not for the American Legion.

Mr. BROOKS. Yes.

Mr. FINN. I am 100 percent in favor of that, provided the boy wants it. If the boy himself wants it, all right. Now, I know there are cases where a boy is in a community where the civilian population does not want the military or the naval forces, and they are a little rancorous about the things they do, in which case they sometimes give the boys punishment which they would not get in the Navy or the Army.

However, if the boy desired—and incidentally in England now they can do it—to have a trial by a civilian court, I personally am in favor of that. I cannot speak for the American Legion on that point.

Mr. BROOKS. I think now the practice is one of comity, that in major offenses against society generally the option is given; is that not true?

Mr. FINN. Well, I only served in the Navy during the war, and I do not think that that was true at that time, although I will say that I know of cases where it did happen.

Mr. BROOKS. I mean in time of peace. I do not refer to time of war. I can see, for instance, where in an occupied area in time of war an offense against society would have to be tried by the military. There would be no alternative there.

Mr. FINN. Outside of the United States, of course, such a system would be absolutely impracticable. I do not see how you could work it. But insofar as offenses which occur in the country—and, although I have no figures, I would venture to say that fully 70 or 75 percent of the people who were tried during the war were tried for offenses which occurred in this country.

Mr. GAVIN. This final review board that you mentioned; what type of machinery would you suggest be set up for the determination of those cases?

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Mr. FINN. The outline of it is set up in the code as proposed, I think, sir, except in the view I take of it you probably would have to enlarge it to more than three members because they would have a very substantial number of cases.

Opposed to that there will be presented the idea that it is going to cost a lot of money, but to me that does not mean one blessed thing when you consider the freedom of our boys and what I believe to be the necessity for taking care of them.

We put them in the service, and we should take care of them, if we put them in there, by giving a decent type of review which they would be entitled to if they did not have that uniform on.

After all, they are still American citizens. And I believe that they should have——

Mr. ELSTON. There is never very much hesitation about asking for additional Federal judges?

Mr. FINN. No, sir; and we should not have any hesitancy about asking for additional members of this Judicial Council or military board of review or whatever you please to call it.

Mr. ELSTON. I think we create some new Federal judgeships about every session of Congress.

Mr. GAVIN. We certainly spent a lot of money in the selective-service set-up to induct the boys.

Mr. ELSTON. I just want to ask Mr. Finn about this. It seems to me that, while section 67 indicates that the Judicial Council shall take action only with respect to matters of law, actually the Judicial Council does review the facts because subsection E provides that if the Judicial Council sets aside the findings and sentence it may—

except where the setting aside is based on lack of sufficient evidence in the record to support the finding, order a rehearing.

Now, that would require a review of the record on the evidence, would it not?

Mr. BROOKS. Does that not refer to a case where there is no scintilla of evidence?

Mr. FINN. Correct; and that is the way I view it.

Mr. ELSTON. You would have to review the evidence to find out whether or not there is a scintilla. And, of course, the scintilla rule does not apply in a civil case.

Mr. FINN. The difficulty always is this: They look the records over, and they say there is sufficient evidence in the record to warrant the verdict of the jury. They then will not inquire into the facts. As a matter of fact, in civil cases, as I understand it, they will not inquire into the facts except and unless all of the information that is presented on the record at the trial is introduced by way of documents or deposition so that the reviewing court can say that they have had or they are equally capable of coming to a conclusion as was the trial judge in the first place. So, as I said to you originally, Mr. Elston, I have no fault to find with this section setting up the Judicial Council except that it does not go far enough, sir.

Mr. PHILBIN. May I bring to the gentlemen's attention subsection D of article 67, which says expressly:

The Judicial Council shall take action only with respect to matters of law.

Mr. ELSTON. That is what I just stated. But the next subsection indicates that they would necessarily have to review the record to determine whether there was a sufficiency of evidence to support a finding.

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Mr. BROOKS. My thought there is—and may I interpose this—that reading the two together you would get the conclusion that, on matters where a directed verdict would lie, the final court reviewing would have that authority.

Mr. FINN. That is all.

Mr. PHILBIN. And only in that case.

Mr. FINN. And only in that case.

Mr. BROOKS. Yes.

Mr. PHILBIN. And not with reference to a general review of facts.

Mr. FINN. Correct. That is my interpretation.

Mr. PHILBIN. And it is necessary to grant a fair and impartial review to the accused.

Mr. FINN. Yes; a fair and impartial review, the type that we think a man ought to have.

Mr. PHILBIN. There is another matter regarding the Judicial Council that I would like to bring to your attention and get your comments on, and that is the provision that confines the eligibility for membership on the Judicial Council to those who have been admitted to practice before the United States Supreme Court. Have you any comments on that particular provision?

Mr. FINN. Yes. I am a member of the United States Supreme Court, and the only reason I am is that I had $25 and was a member of the bar of the Commonwealth of Massachusetts.

Mr. PHILBIN. Can you see any necessity for that particular provision?

Mr. FINN. No, sir.

Mr. ELSTON. As a matter of fact, some of the members of the United States Supreme Court were not members when they were appointed.

Mr. PHILBIN. Precisely.

Mr. FINN. But I do not think that means much. I think the members of this board should be appointed by the President by and with the consent of the Senate, that their salaries should be certain, and that their tenure of office should be certain. That is not provided for here.

Mr. ELSTON. I do not think there is any question about that. I think that that should be in the law. Otherwise, the President could not make the appointment. He would not know how long a period to make the appointment for.

Mr. FINN. Now, if you will bear with me for just 2 minutes, there are two other little things in this bill as proposed which I do object to which I would like to call your attention to. One of them is: In section 106, they say you can get death for lurking—whatever lurking is. "Lurking or spying" is the way it is worded. I assume, although I do not know, that that is based on the case of the Nazi saboteurs. Now, if that wording is changed to "lurking and spying" or "lurking or spying," then the Legion would have no objection, but what lurking actually constitutes is too much in the realm of ethereal——

Mr. ELSTON. Is there any offense in the Articles of War?

Mr. Finn. I do not know.

Mr. PHILBIN. Mr. Larkin says there is.

Mr. FINN. I do not know that, sir.

Mr. BROOKS. You would change that "or" to read "and"?

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Mr. FINN. Yes, sir.

Mr. BROOKS. So it would read, "lurking and spying"?

Mr. FINN. Yes, sir; "and spying," so there would not be any question about the necessity of having the lurking also.

And at the end, in section 140, there is a delegation of the authority of the President.

Mr. ELSTON. What section is that?

Mr. FINN. 140, sir.

Mr. SMART. Article 140?

Mr. FINN. Article, I should say. There is a delegation of the authority of the President. I fear that as written that creates a delegation and subdelegation to such an extent that you might have a second lieutenant passing on very, very serious matters which are in the prior section and articles of the code.

Now, there is an allusion made in the notes furnished by the draftsmen that that is prelaw. With that interpretation I do not agree. Your bill, Mr. Elston, was added, I believe, under the Kem amendment, to the selective-service bill last year and became title 2 of that legislation. Now, the reference here as to delegation by the President of his powers occurs in title 1 of that act which deals with the selective-service boards, and so forth. Now, I do not believe that we can use that authority, where the President obviously should have every substantial authority to delegate his powers in section 1, under the selective service, and bring it over into section 2 where we are talking about military justice.

Mr. ELSTON. I think it is a fundamental principle of law that delegated powers cannot be delegated.

Mr. FINN. Well, I think this article 140 is much too broad as presently written.

Now, there is only one other thing I would like to bring to your attention, and that is the various articles with relation to depositions. I do not understand why a military or naval court must have any wider powers to have depositions introduced before them than does a Federal court. The powers given in this code as to depositions are far more extensive than a Federal court can have. I think that starts at article 49.

Mr. BROOKS. Well, in the military is there not a greater degree of mobility than there is in normal society?

Mr. FINN. That is correct.

Mr. BROOKS. That would be one reason.

Mr. FINN. All the more reason why there should not be the use of depositions, sir.

Mr. ELSTON. I think the reason we provided for depositions before in the bill last year was to give the accused a greater opportunity.

Mr. FINN. Give him the opportunity, but do not give it to the prosecution, sir.

Mr. ELSTON. I think you have to give them equal opportunity.

Mr. FINN. Well——

Mr. ELSTON. And the complaint that we had to deal with was that an accused person was often deprived of witnesses. So we wrote into the law that depositions could be taken.

Mr. FINN. Well, as I understand the present Federal program, the accused or defendant can have depositions introduced in his behalf

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but the prosecution cannot. This as drawn, sir, is contrary to every concept of Anglo-Saxon and American justice as to the right of the person accused to the confrontation of the witness against him.

Mr. ELSTON. Well, we have a law in the State of Ohio, for example, that permits the State to take depositions, but means and the opportunity must be afforded to the defendant and his counsel to be present at the taking of those depositions.

Mr. BROOKS. That is what we call depositions be ne esse.

Mr. FINN. I see. Now we have airplanes and we have rapid means of transportation. And the military got along without this for 170 years or more and I can see no reason why it is necessary to insert it now.

Mr. BROOKS. Mr. Finn, you cover that, do you not, in your prepared statement?

Mr. FINN. I do, sir.

Mr. BROOKS. Do you make suggestions as to how that should be changed in your prepared statement?

Mr. FINN. I say, in my prepared statement, sir, that the use of depositions should be confined to that use which is allowed in the Federal courts under the Federal rules of criminal procedure.

Mr. BROOKS. Mr. Anderson, do you have some questions?

Mr. ANDERSON. No questions, Mr. Chairman.

Mr. FINN. Starting on page 11 of my statement, I have an appendix which cites the specific objections I have to the various sections of the act.

And I want to thank you gentlemen very kindly for your courtesy.

Mr. BROOKS. Any more questions, gentlemen?

Mr. GAVIN. In your wide experience in these courts-martial cases, after a boy is court-martialed and brought to trial, what kind of a defense do you think these defense counsels put up for the boy? What is your honest and conscientious opinion of how well he is defended? That is what I would like to hear you tell us.

Mr. FINN. Based upon the experience I had as a reviewing officer, reviewing courts martial, it was very very poor—very poor.

Mr. DOYLE. Might I ask just one question?

Mr. BROOKS. Mr. Doyle, go right ahead.

Mr. DOYLE. Might I ask this: On that point—and I have no adequate information I might state in asking you this question except my own personal knowledge of several cases in California—are there a number of cases in your judgment where boys have been given dishonorable discharges, I mean boys of immature age, for alleged offenses which would not be considered nearly so serious in a civilian court so that now were some method of review by a civilian court to be authorized it could go over all these cases and see if more substantial justice could not be given to thousands of cases of boys who are now suffering and being handicapped more or less for life with a dishonorable discharge?

Mr. FINN. Well, I may answer that question by stating to you, sir, that in the Regulations of the National Executive Committee passed last May there is a suggestion that the Congress before enacting the legislation pending look into this question of discharges and so forth. But that is something which is not germane to the present issue and I did not go into that, sir, at this time.

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Mr. BROOKS. Now, gentlemen, if there are no further questions, tomorrow we plan to have Maj. Gen. Milton A. Reckord and Col. Melvin Maas as witnesses before the committee.

Mr. SMART. I would like to say, Mr. Chairman, that the schedule for tomorrow also includes Mr. George Spiegelberg, who is the representative of the American Bar Association. He has been particularly scheduled for tomorrow as there has been difficulty in getting him down here. I am hopeful that we can meet until noon so all these gentlemen may have an opportunity to testify fully and the committee to ask all the questions they want.

Mr. BROOKS. Then, if there are no further questions, we thank you very much, Mr. Finn. You have made a very fine statement and we appreciate it. The committee will be adjourned until 10 o'clock tomorrow.

(Whereupon, at 11:45 a. m., the committee adjourned until Thursday, March 10, at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

THURSDAY, MARCH 10, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The committee met at 10 a. m., Hon. Overton Brooks (chairman of Subcommittee No. 1) presiding.

Mr. BROOKS. The committee will please come to order.

We have this morning two witnesses to be heard.

We have Col. Melvin Maas this morning with us representing the Marine Reserves.

Will you have a seat, Colonel.

STATEMENT OF COL. MELVIN MAAS, NATIONAL PRESIDENT OF THE MARINE CORPS RESERVE ASSOCIATION

Colonel MAAS. Mr. Chairman and gentlemen, our association is very much interested in this pending legislation. On the whole we are for it. We think it is a very progressive step forward.

We are delighted that you are considering it now. And we congratulate the drafters of this legislation.

Mr. BROOKS. Colonel, if I may suggest it, would you put a little bit in the record of your background, for the record?

Colonel MAAS. Yes.

Mr. BROOKS. I think everybody on the committee knows you—knows you well—and knows your background. But I think it would be well if the record shows something of that.

Colonel MAAS. Thank you, Mr. Chairman.

Mr. RIVERS. Your official title and the official title of the association.

Colonel MAAS. I am national president of the Marine Corps Reserve Association and by resolution of a convening of the association I am empowered to speak for the association on all legislative matters.

Incidentally, I am not paid by the association or anybody else for this type of representation.

I served in Congress for 16 years, the last 10 of which was as senior member of the Naval Affairs Committee.

I served in the Marine Corps Aviation in World War I and served in the Reserves between the two wars, and served in Marine Corps aviation again in World War II, from Guadalcanal to Okinawa.

After that I drafted the Reserve program for the Marine Corps and then spent a year as adviser to the House Naval Affairs Committee.

During that period I undertook by direction of the chairman, Mr. Vinson, an intensive study of the naval justice system and made a

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considerable recommendation relative to naval justice. So I have had some intimate contact with this subject.

As commanding officer I have meted out all kinds of punishment from reprimands to convening general courts martial.

As deputy commander of Marine air base on the Pacific coast I was also a reviewing authority on disciplinary actions, including general courts martial.

We feel, however, in this specific bill that while in general it is satisfactory and it is certainly in the right direction, it was a compromise and as is inevitable with compromises you get peculiar quirks in it. We think there are some very peculiar quirks in this bill.

I would like to make a few general statements and then I have specific recommendations on a number of sections, with proposed language for amendments. I am also proposing general limitations to sections without attempting to write language.

I would like to point out first of all, gentlemen, that we think that there may be too much emphasis being placed on the desirability of unification of the military-justice system.

We think there is no magic or no particular panacea about having it absolutely uniform between all three services. In fact, we think it is not workable. And we want to point out to you that while this bill is a compromise of the naval justice system and the Articles of War, that there is a definite difference in disciplinary control that is required at sea and the disciplinary control required on land. Therefore the types of punishment may be quite different, of necessity.

A relatively minor infraction of rules at sea may become actually a very major thing from a disciplinary standpoint. A minor infraction may endanger the lives of all those on the ship, and it may involve a whole flotilla of ships. It is very rare that such a situation could exist in any other type of organization.

A man in the crow's-nest of a ship, violating his orders, might very well not spot a hazard or an enemy in time to properly warn the ship and alert it, and the whole crew may be affected.

Therefore, it is necessary for discipline at sea to be very much more rigid and very much more drastic than is necessary on shore. That is recognized, gentlemen, through the ages in maritime law as as well as in naval law.

Now I see no reason why that severity, which I recognize as necessary in the Navy at sea, should be superimposed on the Army and the Air Force. And in many ways that has been done.

You tried to jumble the two to get the magic formula of unification, and I think you are going too far in that direction. I think you have to recognize that there are fundamental differences.

And while we agree with the necessity of these distinctions for sea duty, we do not think these necessarily or even properly should apply to all types of disciplines.

Mr. BROOKS. May I ask you a question, Colonel?

Colonel MAAS. Yes, Mr. Chairman.

Mr. BROOKS. Now, you really represent the Marine Reserve. The Marine Reserve should be acquainted with discipline at sea and on land.

Colonel MAAS. Yes.

Mr. BROOKS. How has that been handled by the Marine Corps in the past? Do they have a different system of rigidity of punishment on sea from what they have on land?

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Colonel MAAS. Yes. While the laws governing are, of course, the same as the laws governing the Navy, we handle our own discipline on shore. When we are at sea we come under the same jurisdiction as the Navy, and very properly so.

A contingent of marines on board a capital ship are part of the crew of that ship and they are subject to exactly the same disciplinary control as seamen. But when we are on our own shore based installations we handle our own discipline.

And we know from that experience what would only get a reprimand on shore, fittingly, might very well justify a court martial at sea.

Mr. BROOKS. Well, is that a difference in the code used or is it a difference in the enforcement?

Colonel MAAS. It is a difference in the enforcement to a large extent. However, the Marine Corps does have its own rules and regulations under the general laws governing the Navy.

But we feel that in this you have gone beyond that and you are imposing on the other forces——

Mr. RIVERS. In that connection, I do not want the record to show something that you do not mean. I am referring to that "you." When you say "you," it looks that we wrote this bill.

From your long experience in legislation, you know you have to introduce a bill before you can start to work on it.

Colonel MAAS. Yes, I was holding to the old illusion that Congress wrote legislation.

Mr. RIVERS. Well, you are wrong.

Colonel MAAS. Yes. I know where it comes from.

Mr. RIVERS. This is Professor Morgan's recommendations, and we are going to start from this. And as usual, this committee will come up with the right answer.

Mr. BROOKS. Well, the "you" is an oratorical "you," anyway.

Colonel MAAS. That is correct.

Mr. SMART. Mr. Chairman, may I ask the witness one question here to clarify the record?

Mr. BROOKS. Yes.

Mr. SMART. When the Marine Corps is functioning as a part of the Navy, be it ashore or afloat, it is governed by the Articles for the Government of the Navy. But it may very well become subject to the Articles of War if it is attached to an Army unit.

Colonel MAAS. That is correct. And in World War I the Marine expeditionary forces in Europe were governed entirely by the Articles of War.

Mr. SMART. I merely wanted to point out that the Marine Corps is the only organization within the armed forces that may be subject either to the Articles of War or the Articles for the Government of the Navy.

Colonel MAAS. That is correct. The Marine Corps is an independent military organization and until the Security Act of 1947 was passed actually was directly under the President. It was assgined by Executive order at various times to the Army and to the Navy.

But it was never a part of the Navy. It is still not part of the Navy. The Marine Corps by law is part of the Navy Department now, but it is not part of the Navy. It is still a soverign, independent military organization.

Mr. RIVERS. It is your thought in that connection, about the administration of justice aboard ship, that we better be careful how

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we even disturb that because we all must recognize that the master of a ship, whether it be Navy or maritime, must be the absolute boss at all times.

Colonel MAAS. That is correct. And I want to point out in that connection that you must not separate—again the oratorical "you"—disciplinary control from command. I am a very ardent believer in an ultimate appeal from any kind of disciplinary control that involves, or punishment that involves loss of freedom or loss of money.

But the widest latitude must be given to the chain of command in enforcing discipline. A commanding officer who does not control his own discipline is not a commanding officer.

He just does not have command. And that is even much more apparent at sea than it is on land. And you may not be able to add all of the protective features that you would desire for supervising of discipline at sea, or you may ultimately destroy the discipline that is life or death at sea, gentlemen.

And I caution you to be very careful not to upset that balance that we have now.

Mr. GAVIN. You mean command control?

Colonel MAAS. That is correct. Well, you do not command if you do not have discipline.

Mr. GAVIN. That may be true.

Colonel MAAS. If you cannot control your discipline.

Mr. BROOKS. You do not think this bill goes too far, then, in giving command control?

Colonel MAAS. No, I do not.

I have some specific recommendations. But I want to caution the committee against amending the bill in such a manner as to remove from the chain of command basic disciplinary control.

That is the one criticism I had of your revised Articles of War last year. I thought it took from the commanding officer prerogatives that he should have had.

Now, you may have gone a little too far in the other direction in this bill. For instance, I gravely question whether a lesser than a general court martial should award a bad-conduct discharge, even with the reviews that are possible.

The people in the military service generally speaking do not realize the serious consequences in civil life of a bad-conduct discharge. The statement has been made that it was nothing more or less than a refusal to give a letter of endorsement.

That is not so. It bars the individual from working for the Government. It bars him from a civil-service job. It bars him from getting back in the military service. And it bars him nowadays from almost any kind of a decent job.

The young boy of 17 or 18 may have committed an act of indiscretion and in later life be capable of great responsibility and great advancement but be denied that because he has on his record a bad-conduct discharge.

Mr. GAVIN. How are you going to correct that situation?

Colonel MAAS. I think a bad-conduct discharge should be awarded only by a general courts martial. You are depriving a man of most valuable property rights. I am not saying that bad-conduct discharges should not be awarded, but I question whether they should be awarded by a three-man court.

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Mr. GAVIN. They were awarded quite freely, were they not, during the war?

Colonel MAAS. Yes, altogether too freely. If this bill—and I am not certain that it does—repeals the present system whereby the Navy at least can correct records administratively, then I think that ought to be thought of very carefully, too.

I am not sure it does, but as I read the bill it appears to me that these things become final and irrevocable and does not leave administrative authority that we sought for so long and finally obtained from Congress for administrative correction of errors that came to light in discharges.

Mr. GAVIN. Well, what are your recommendations along that line now for those that have already received bad-conduct and dishonorable discharges?

Colonel MAAS. Administrative reviews, with authority to correct them administratively.

Mr. RIVERS. They have it.

Colonel MAAS. Yes. But will they have it if this bill passes?

Mr. RIVERS. Under the GI bill of rights.

Colonel MAAS. Yes. We fought for that for many years and it was finally obtained under the GI bill of rights. It is a valuable mechanism. Do not destroy it, gentlemen.

Mr. RIVERS. It is unfortunate, very unfortunate, that the records were not changed. Whenever they rendered a decision, regardless of the after-discovered evidence or whatever you want to call it, they will not change these records. That has been my own expereience.

Colonel MAAS. That is correct. And I have had many years of experience with that, too.

Mr. RIVERS. I had a boy in my own experience—and everybody in Congress has, too—where the Navy reviewed his record. They held him incommunicado—which was not infrequent—at some shore station. And he never did get to see counsel. He finally pleaded guilty to something. He did not know what it was.

Colonel MAAS. Mr. Rivers, it is inherent in the military system that there is always great reluctance to admit a mistake.

Mr. RIVERS. That is right.

Colonel MAAS. Because your future career and your promotion depend on not making mistakes. So it is understandable. However, if you separate authority to review administratively these cases from those who originally had jurisdiction you eleminate a great deal of that.

Mr. RIVERS. That is right.

Colonel MAAS. And I hope you will do nothing that will——

Mr. RIVERS. That might be what Mr. Gavin is talking about. I would like to find some way to do it.

Mr. GAVIN. That is what I would like to find out.

Colonel MAAS. Gentlemen, we had many, many bills when I was on the Naval Affairs Committee to correct the types of discharge. We passed some of them and the President vetoed every one as fast as we passed it.

We finally quit passing any. Nine times out of ten, of course, the reason for asking for the change was that 40 years had gone by and the individual suddenly found out he could not get a pension because he had the wrong kind of a discharge.

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Mr. RIVERS. That is right.

Colonel MAAS. And then suddenly his honor was at stake. When I asked all of them the question: "If we pass the bill with the provision that it still would not make you eligible for pension" they lost all interest at the meetings.

As a matter of fact, I do not think there have been a great many injustices from our past system, but those that have been made are serious.

Mr. RIVERS. That is right.

Colonel MAAS. And should be eliminated. And the few that have been made, or the percentage, have thrown the fear into everybody. And this is certainly a tremendous step forward.

I do want to advocate very ardently that if you retain the three separate Judge Advocate General Departments—and I think they should be retained as separate organizations—that you create or see that legislation is properly sponsored to create a separate Judge Advocate General's Department in the Navy, as a separate promotion list, and where fitness reports are marked only by those in the chain of command of the Judge Advocate General's Department.

It is axiomatic that the man who marks your fitness report pretty much controls your actions. And if the fitness report of a defense counsel or the judge advocate—the prosecutor—is marked by the commanding officer who convened the court you have a most unfortunate and unfair situation.

Mr. RIVERS. That would be simple. You know, when you were on the committee we wrote a separate dental bill, you remember.

Colonel MAAS. Yes. We had the same reasons for it, too.

Mr. RIVERS. Yes.

Colonel MAAS. I mean much of the same reasons.

This is a basic question, that your Judge Advocate General's Department must be completely separated from the chain of command, that is of the line command.

Mr. BROOKS. I want to ask you another question along that line. Suppose we pass this bill or some similar bill to this and it becomes a law and it says who shall have final jurisdiction over the question of bad-conduct discharges.

Now, how will that affect the provision of the GI bill of rights in your opinion, which is already law?

Colonel MAAS. This says it is already irrevocable.

Mr. BROOKS. Does this supersede it?

Colonel MAAS. It is a later law and therefore it would supersede any previous law, Mr. Chairman.

Mr. RIVERS. I am sure of that.

Colonel MAAS. Unless you put a saving clause in there.

Mr. RIVERS. Yes.

Mr. BROOKS. So the jurisdiction for administrative review of bad-conducted discharges will be circumscribed by the passage of this act.

Colonel MAAS. Definitely, by the last act passed.

Mr. RIVERS. In that connection, Mr. Chairman, I believe we are strengthened by the suggestion made by the colonel, of having an independent board to put the ultimate O. K. or disapproval on that action.

Colonel MAAS. That is right.

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Mr. RIVERS. Because he would be an independent chain of command, as you are talking about.

Colonel MAAS. Yes. They ought to be completely separated and have no connection at all.

Mr. BROOKS. What would you think of this: Putting in a proviso that in spite of provisions for the finality of the jurisdiction under the present act, that the GI boards shall still continue to have jurisdiction for administrative review of discharges.

Colonel MAAS. Yes. Put in a saving clause not to repeal the authority that exists under the GI bill of rights, which I fear otherwise will be done.

We are very much opposed to a single Judge Advocate General's Department for the armed services. They all have their own problems and they need their own understanding and interpretation of discipline and punishment.

When you merge the services into one service—which I hope will come—that will follow automatically. You will then have one Judge Advocate General's Department. I think you are getting a little far afield to separate this completely from the services.

You then do take out of chain of command disciplinary control.

Mr. RIVERS. Right in that connection, it is a little contradictory to me and confusing. While you say in one breath make it independent from the line-officer command, for instance in the Army, that is a chain of command in the Army——

Colonel MAAS. But they will be naval officers, living with naval officers and dealing with naval problems. It is that day-to-day contact so they will understand naval problems, as distinct from a corps that does not understand any military problems.

If you set up a separate Judge Advocate General's Department for three services, as long as you have three services you need three Judge Advocate General Departments.

Mr. RIVERS. I follow you on that. But now you say——

Colonel MAAS. I am just saying that in the Navy do what you have done in the Army and Air Force, and that is to create a separate Judge Advocate General's Department and make it a special career within the Navy.

You set the pattern for that in the Army and Air Force. That is all I am asking.

Mr. GAVIN. Then, they would have three different patterns to operate under.

Colonel MAAS. Within the framework, yes.

Mr. GAVIN. They would all be looking at it from three different ways.

Colonel MAAS. No.

Mr. GAVIN. Well, supposing a group of boys were involved in some minor crime. One group sentences them on this basis, another on another basis, and another on another basis. One might get 3 years, another get 4 years, and another get 5 years, for the same offense.

Colonel MAAS. That may be necessary.

Mr. RIVERS. That happens in civilian life, too.

Mr. PHILBIN. Sure.

Colonel MAAS. That is the very point I am making. That very well may be necessary. An air crewman's negligence in his duty

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involves the lives of the flying crew of that airplane. The same type of negligence in an infantry battalion might be a very minor thing.

It might result only in the necessity for a reprimand. Therefore, I do not think you can accomplish the desired purpose very rigidly for all three services as long as they are three separate services.

That is exactly the point I make, Mr. Gavin.

Now I want to urge something on this committee that is perhaps revolutionary. This is the time to consider it, however. That is removing retired personnel from military disciplinary control completely.

Gentlemen, it is an anomalous situation that retired personnel, that is, military retired personnel, should be subject to military discipline. And you have thereby denied to yourselves—to the Congress and to the public—untold valuable information, advice, and wisdom that you might otherwise have gotten if retired officers—and of course the same applies to retired enlisted men—were not still gagged. Now we understand the necessity for it when they are in the active military service.

I have no quarrel or no objection to that at all. I thoroughly agree with it. But if our theory has been correct that retired pay was a deferred emolument of the office of military life, that it was earned during your active time but withheld by the Government, that is saved for you, and was part of your earnings, then there should be no strings tied to it and the receipt of retired pay should not be contingent upon good behavior.

There is not any reason, gentlemen, why a retired officer should not have the same right to criticize the President or the Cabinet or the Congress that any other American citizen has.

It is a God-given right to Americans to criticize anybody and everybody. And as long as it is kept within the bounds of law and does not become libel or slander—and there are adequate civil laws to deal with that—it is a healthy situation.

Where the right to criticize is unfettered, dictatorships cannot exist.

Now, in my opinion—and I have had intimate contacts with the military for 32 years—the majority of retired officers if they felt free to talk, gentlemen, would be principally warning the Congress and the country against the dangers of military dictatorship.

The retired officer is not a militarist and he is in a position to have seen the trends, when they are trends. And most of the retired officers that I know of feel very strongly and they are in a position through their long years of service to warn us in advance of the trend and the dangers that we as civilians do not see toward building a military control and militarism in a country.

Mr. RIVERS. It would make your Reserve organization stronger, because they would have a greater interest in it.

Colonel MAAS. This bill, Mr. Rivers, goes beyond anything ever proposed before in regard to disciplinary control over your Reserves. I am going to discuss that because I do not think you gentlemen realize what has been written in this bill and what the effect would be on Reserves. But I am suggesting this new principle in connection with the retired personnel.

And I want to cite just one illustration. And I know of hundreds of them. In 1942, early in 1942, a former Member of Congress who was a retired enlisted man but with the rank of captain which he won in

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World War I was publishing an enlisted man's magazine. He was very critical of Mr. Stimson. It had nothing to do with military security at all. There was no question of security involved.

He was criticizing the War Department's administration of the personnel, particularly as it related to former enlisted men who had become officers. It was very annoying. And Mr. Stimson, by written order, directed that man to immediately cease publication, to have nothing further to do with this magazine, give up his interests in it, and forbade him in writing to write for any publication or to make any public statement under penalty of being court-martialed and losing his retired pay.

Now there was no element of security involved. It was only politically embarrassing. Why did that man not have the same right to criticize the Secretary of War that any of us had or have had?

Gentlemen, the most dangerous thing you can do is to unduly restrict the right to criticize, which is after all the right of freedom of speech.

I believe the country would immensely benefit if retired officers were removed from disciplinary control.

Now on any other matter, if a retired officer uses his status as a retired officer or information he gained while on the active list after he is retired for business purposes improperly, or any other, there are adequate civil laws to deal with him.

Mr. BROOKS. What about Reserve officers? I refer to the provision, for instance, of article 2, section 6, which covers fleet Reserves and fleet Marine Corps Reserves.

Colonel MAAS. Exactly the same thing.

Mr. BROOKS. Same principle?

Colonel MAAS. Exactly the same principle. There is no reason why they should be restricted. It is un-American. It is unfair and it is unnecessary, gentlemen. And we I am sure are denying ourselves a great deal of valuable advice that we would otherwise get.

Mr. RIVERS. Of course, you see the former executive department employees who headed some of these bureaus down there and who had life-and-death control of our economy during the war. I call them brass heads, myself. They have garnered all kinds of information.

And the first thing they will do when they leave is to sit down and write a book. Yet they come before our committee and say, "This is top secret," and then you will see in some big magazine like Collier's or the Saturday Evening Post a story on the thing for which they have been handsomely paid. And that is not at all infrequent.

Colonel MAAS. No. While you may question the propriety of it, there is certainly nothing illegal about it.

Mr. RIVERS. But my point is and I say why deny it to you.

Colonel MAAS. That is right, why deny it to us.

We all know the famous case of a retired officer who wrote a book that was about to be published and which did not involve military security but involved embarrassment to certain military leaders and certain political leaders, and this man was immediately ordered to active duty and then forbidden to publish the book.

I had a little experience myself, gentlemen. When I came back from the South Pacific in 1942, word awaited me at Pearl Harbor, when I came through on my way to return to Congress, that I was to make no public statement whatsoever. Well, I was in uniform

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and I said, "Of course I will make no public statement." They said, "That is not what we mean. You are never to make a public statement about what you saw in the South Pacific, even when you get back to Congress." And I just said, "Nuts to you."

They said, "We will keep you on duty until you make such a promise. You will just never get back to Congress." Well, I came back to Congress and I talked abundantly.

Mr. RIVERS. You must remember, you can still be called to active duty, Colonel.

Colonel MAAS. Well, I want to point out that under this bill, gentlemen, on page 4, article 2, line 24, that these articles——

Mr. BROOKS. What section is that, Colonel—I mean the subsection?

Colonel MAAS. Subsection 3.

Mr. BROOKS. All right.

Colonel MAAS. That these articles apply to Reserve personnel who are voluntarily on inactive duty training authorized by written orders.

Now, gentlemen, to personalize this again, at the request of the Marine Corps I organized a Reserve wing staff 6 months ago. I am in command of that wing staff. We are a volunteer organization.

We receive no pay. We do not wear uniforms. The Government furnishes no quarters. We meet once a month, in civilian clothes, for 2 hours, and we study military matters. Under this proposal, if I should happen to make a remark that was considered derogatory of the President or of the Cabinet or of the Congress, anytime within 3 years I can be ordered back to active duty for some alleged remark I made in my civilian capacity and held indefinitely without my own consent for court martial.

Now, gentlemen, if you want to destroy the Reserves we are building up, that will be a fine section to leave in the bill.

Now, we are in complete agreement that Reserves when they are on actual active duty should be subject to the same code as all regulars. But, gentlemen, it is going far afield to apply it to the ROTC and to apply it to Volunteer Reserves. This could actually apply to a man in his own home studying a correspondence course, gentlemen.

If some neighbor stopped in and he made some remark that might be interpreted as being critical of the President, he might be called to account 2 or 3 years later, when he did not even remember of such a remark being made. Gentlemen, that is a very dangerous provision.

It is unnecessary and unworkable and in my opinion will cast reflection upon your whole bill and it will have a tendency to destroy your Reserve—your Volunteer Reserve. It is just inconsistent with our whole fundamental concept, gentlemen.

Mr. RIVERS. Is this the first time such a thing has been proposed?

Colonel MAAS. Why of course it is the first time that such a thing has ever been considered.

Mr. PHILBIN. Mr. Larkin seems to dissent from that statement.

Mr. BROOKS. We will hear from Mr. Larkin later. By the way, I have heard Mr. Larkin discuss this and I think the committee, too, is entitled to his views. He is a witness later on, is he not?

Mr. SMART. On a section-by-section reading of the bill for amendments, Mr. Larkin will explain the position of the national Military Establishment on all sections.

Mr. RIVERS. What is the situation with regard to that prohibition now, as the law exists today?

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Colonel MAAS. Well, to the best of my knowledge—and I have had very extensive experience for 32 years in the service and the Reserve—there is no restriction about my making any comments.

Of course I do not expect to commit any acts that would be detrimental to the Military Establishment. But if, when I am sitting down in private quarters merely studying military subjects, every remark is to be subject to court martial, why it does not become very attractive to give my time to training myself further.

I do not think my views are any different than a million other young—younger men.

You know, gentlemen, this almost smacks of attempting to impose thought control in this country. Now I do not have any question about it. I say when a Reserve is on active duty and performing military duty he ought to be subject to all laws.

But think very carefully before you extend it to ROTC and extend it to volunteer training units.

Gentlemen, on page 6, article 3, subsection (a)—you must have some limitation on the time in which personnel can be ordered to active duty for a trial by court martial. If you are going to retain the provision that the Reserves are subject to it, you have to put some other limitation than 3 years.

It is unfair to call a Reserve in as late as 3 years later and say "3 years ago you made a remark about the Secretary of the Navy or the Secretary of Defense or the President or some Congressman."

Mr. BROOKS. Well, that is that Hirshberg case, is it not, that you are getting into now?

Colonel MAAS. No. It was a different type of case. There the man had left the military service. Then he reenlisted. Of course he should not have been triable for something that had happened in his first enlistment because he had become a civilian in the meantime.

Mr. BROOKS. Is that the same principle that you are discussing there: If a man has committed an offense and it is not discovered until he is out of the service——

Colonel MAAS. I think, Mr. Chairman, even if he is still in the Volunteer Reserve for instance, they should not have 3 years in which to charge him with an alleged remark.

Mr. BROOKS. What time would you suggest?

Colonel MAAS. Well, I think it certainly ought not to be more than 3, or at the maximum 6 months, afterward.

Mr. RIVERS. After what?

Colonel MAAS. The alleged offense.

Mr. RIVERS. What about after the declaration of the terminaton of the emergency?

Colonel MAAS. Well, this is not dealing with emergency. This is permanent law. This is peacetime that I am talking about here.

Mr. BROOKS. Would you not put it 6 months after the knowledge of the facts

Colonel MAAS. No. He should be charged immediately. Of course, the best way to do it is to take it out of the bill, as far as the application to training units. That would eliminate that. Otherwise, put in some kind of reasonable limitation.

On page 13, part III, article 15—gentlemen, I want to go back to a remark I made in the opening statement that when a commanding officer's punishment involves loss of pay or restriction of liberty or a

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reduction in grade it should be subject to review by a court martial if demanded.

In this case I think you go too far in granting disciplinary control to the commanding officer. Now, there ought to be some check on it somewhere. The defendant ought to have some right of appeal.

Certainly senior noncommissioned officers, who traditionally have had that protection, ought to have that retained.

It also seems pretty drastic to us that a commanding officer can fine an officer half of his month's pay for 3 months. It is only 1 month for an enlisted man, but 3 months for an officer.

Well, I do not see the logic in it. I grant you that an officer ought to be punished more severely for the same thing than an enlisted man, but he is in the loss of half of his month's pay. His commitments are probably as heavy if not heavier than an enlisted man's. I think that is undue authority for a commanding officer.

Mr. RIVERS. Is that a new thing?

Colonel MAAS. Yes; much of this is authority that does not now exist or has not existed at least.

Mr. RIVERS. Of course you realize there will be cases where a man just can be obnoxious—not to point of where a court martial is warranted but where some disciplinary action is needed.

Colonel MAAS. I think without loss of pay.

Mr. RIVERS. The most sensitive nerve in a man's body is his pocket nerve.

Colonel MAAS. We have a tradition, Mr. Rivers, in this country that a man cannot be deprived of the property without due process of law.

Mr. RIVERS. I am familiar with that. I know that happens every day. And I do not advocate its continuation. But there are certain things involved. When a man is in the military he has certain——

Colonel MAAS. That is all right, but every once in a while you will be serving under some commanding officer who is an "s. o. b."—I presume that is a legitimate word now——

Mr. RIVERS. It has been legitimate as far as I am concerned.

Colonel MAAS. I mean in official places.

Mr. BROOKS. You agree to keep that out of the record.

Mr. RIVERS. Seriously, you can see what I am talking about.

Colonel MAAS. Yes.

Mr. RIVERS. I mean just short of the need for some real punishment.

Colonel MAAS. There are other ways of doing it. You can mark the man's fitness report, which will have plenty of effect. You can restrict him to quarters, and other things. But when you start taking his money away from him, it ought to be subject to review.

Mr. GAVIN. You say an officer's commitments are greater than an enlisted man's.

Colonel MAAS. Yes.

Mr. GAVIN. I do not quite agree. An enlisted man might have just as much responsibility on his income as an officer with his income.

Colonel MAAS. Oh, no doubt of it. That is why I say there should be distinction as to the pay. I think the commitments would relatively be about the same.

Mr. BROOKS. Let me ask you this, Colonel: Do you find any fault with regard to this punishment on bread and water for 5 days?

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Colonel MAAS. Personally, I do not. And in studying the bill, none of our lawyers in the association made any comment on it. I do not know. It would do most of them good to go on a diet for 5 days, anyway.

I do not have any quarrel with that provision.

I would like to pass, gentlemen, to article 19, page 17, line 14. I questioned before and I want to renew my criticism or at least question the propriety of any court than a general court martial giving a bad-conduct discharge.

I have made my comment on it, but I want to put it in its proper place. I suggest that the bad-conduct discharge be stricken from that authority.

Mr. BROOKS. I would like to ask you this question, too. It occured to me in reference to the provision that you just commented about, the preceding one.

Colonel MAAS. Yes.

Mr. BROOKS. What do you think of the action of so many courts martial in taking away from the dependents of the enlisted man the pay which they are entitled to under our laws for those dependent upon the man?

Colonel MAAS. Well, I have always felt that that was a very cruel and harsh thing to do to, penalize the family.

Mr. BROOKS. For instance, in the last war we drafted men with four and five and six children. Now, if that man gets into trouble in service the court martial can take away all of his pay, even the allowance give to dependents.

Colonel MAAS. Well, that I think is unfortunate. I am not too prepared to state a position for our association on it because, again, as I say, our staff of volunteer lawyers—and we have some very distinguished members of the bar—made no comment.

Personally, I have always felt that that needed correction, that the families should not be penalized for the man, and I think that might well be considered in this bill.

Mr. RIVERS. Right there, in that same article, but over on the next page, 18, it says "A bad-conduct discharge shall not be adjudged unless a complete record of the proceedings and testimony before the court has been made."

Colonel MAAS. I am going to cover that. But I said in my opening statement, I do not think it is adequate anyway, even though it is going to be reviewed. It may get a perfunctory review.

I do not think that the lesser courts—the special court martial—should have the authority to issue a bad-conduct discharge. That is a far more serious thing than people in the military sometimes realize.

Mr. RIVERS. You say change that and make it a general?

Colonel MAAS. I would not permit a bad-conduct discharge to be awarded by less than a general court martial.

Gentlemen, on page 19, under article 21, at the end of line 4, I suggest the additional language: "Provided he is not tried twice for the same offense by different armed-force tribunals."

Now this would apparently permit it. I do not think that anybody should be tried twice by two different armed forces for the same offense.

Mr. RIVERS. Could they not plead double jeopardy?

Colonel MAAS. Well, you permit double jeopardy in this bill, though. I do not think it should. I do not think you should permit double jeopardy. That is a sacred American principle, too.

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Mr. RIVERS. Colonel, about that bad-conduct discharge, would you go so far as to say that no court martial save a general court martial should be permitted to render any kind of a discharge?

Colonel MAAS. No, I am saying a bad-conduct discharge is a pretty serious discharge and——

Mr. RIVERS. Well, they can change the names of them. They can get around that.

Colonel MAAS. No, I think that is the least one that will bar you from civil service.

Mr. RIVERS. I say that could be changed. The regulations can be changed.

Colonel MAAS. No. That is provided by law. That term is a legal term.

Mr. RIVERS. I see.

Colonel MAAS. At least it has become so by usage and I am sure it is by legislation. I do not think you would find that happening. You would hear about it very quickly if you did, from us if nobody else.

On page 25, gentlemen, in the second line, after the words "Defense counsel" we suggest that you insert: "Unless defendant waives in writing such qualification." Now we suggest the same insertion in subsections (1) of (c) and in (2).

Now, the purpose of that is that where the prosecutor is a law officer, the defendant can waive the defense being a law officer, that is a trained officer. It ought to be done only if he waives that.

Our next comment on page 28, line 6, after the word——

Mr. BROOKS. What article is that?

Mr. SMART. Article 30.

Colonel MAAS. Yes, article 30.

Mr. RIVERS. Section (b).

Colonel MAAS. Section (b). We suggest that you insert after the word "that" "by reason of his constitutional rights," so that the accused would be advised that he did not have to make any statement and the reason he did not have to is because of his constitutional rights not to have to make them. We think it is quite important that he know the reason he does not have to make them and it is not just some gratuity by a kind-hearted officer.

On page 30, article 34, on line 23, after the word "evidence," we suggest that you insert "beyond a reasonable doubt." We think it is just a little too broad the way it is now: The convening authority shall not refer a charge to a general court martial for trial unless it has been found that the charge alleges an offense under this code and is warranted by evidence." We think the evidence should be beyond a reasonable doubt.

Mr. BROOKS. The same term is used in civilian trials.

Colonel MAAS. Yes.

Mr. PHILBIN. It would not be. In civilian courts it would be prima facie determination.

Colonel MAAS. Well, you put no restriction or qualifying term on this one. You do not even call it prima facie evidence. You just say evidence.

Mr. PHILBIN. I think if you want to conform it to civilian language you should make it prima facie determination.

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Colonel MAAS. Well, we will leave that to you gentlemen to work out. We think there should be some qualification.

Gentlemen, on page 32, article 37, we feel very strongly that this article should carry some penalty.

That was dealt with quite adequately yesterday. I do not know as I would go as far as the American Legion did on that. But we certainly feel that it is important that there be a penalty for anyone violating this prohibition against unduly influencing members of the court or the prosecution. A law without a penalty is no law at all.

Mr. RIVERS. General Riter sure put some teeth in it yesterday. He sure suggested some.

Colonel MAAS. Yes. I am sure you will deal with that. We add our support, that there must be some penalty or it becomes meaningless.

On page 33, gentlemen, article 38—we suggest that if the counsel chosen by the accused is not qualified as a lawyer, with equal qualification to the prosecutor, that the qualified counsel appointed for the defense by the convening authority—one who is so qualified—should not be excused.

If the accused elects to ask for a counsel who is not a lawyer and not properly qualified and the convening authority has appointed such a qualified officer, the court should not excuse him.

We feel the interest of the accused whether he wants it or not should be protected by having a trained officer as an associate counsel. So we suggest that you delete the authority to excuse such counsel.

Mr. BROOKS. What line is that?

Mr. GAVIN. Wait a minute. Let me hear you repeat that, again. What did you say?

Colonel MAAS. That if the accused——

Mr. GAVIN. The court appoints——

Colonel MAAS. No. The convening authority——

Mr. GAVIN. Yes.

Colonel MAAS. Appoints a qualified defense counsel, with equal qualifications to the prosecutor.

Mr. GAVIN. Yes.

Colonel MAAS. Now, if the accused elects to select some other officer who is not qualified, this gives authority for the court to excuse the defense counsel who has been appointed by the convening authority.

We think that even though the accused ought to have the right to his own counsel, whether he is qualified or not, that there should be on his side a designated trained legal officer as an associate counsel.

Mr. RIVERS. You say this bill deprives him of his right to employ his own counsel.

Colonel MAAS. No, it does not. But if he does employ his counsel the court can excuse the one that has been appointed by the convening authority.

Mr. RIVERS. You think we should put that in here?

Colonel MAAS. Yes, I do.

Mr. HARDY. You mean even though the defendant does not want him?

Colonel MAAS. That is correct. In my opinion it is the duty of the court equally to protect the defendant as it is to see that the prosecution——

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Mr. WINSTEAD. Suppose the defendant feels that appointed counsel would advise him in the wrong direction and he does not want his services?

Colonel MAAS. No. I am suggesting that he be there as associate counsel. He still does not have to follow him, but he has the benefit of his advice. I do not think the court has a right to excuse him. I think the court's obligation is to carry the rights of the accused.

Mr. GAVIN. Would you care to express an opinion as to what you think of the defense counsel that was afforded these boys in the cases that have come to your attention over the past several years? You say you have had 32 years of experience. What do you think of the defense counsel that some of these boys had?

Colonel MAAS. Not too much, frankly. I think most of them were conscientious, Mr. Gavin. There were some of them, in cases that I reviewed, where the defense counsel was not conscientious.

He was thinking about his own promotion. And he was living in the same bachelor officers' quarters with the prosecutor. Too many of them were not trained.

Now, near the end of the war that began to be pretty well corrected. You began to get lawyers in there who began looking on them as a client.

Mr. GAVIN. You think that possibly some of the counsel when appointed by the court would not be satisfactory to the defendant in the case?

Colonel MAAS. Well, he might think he wants them. But I think in addition to that he should have the protection of a trained law officer as associate counsel.

Now, gentlemen, I am going to suggest that you excuse me——

Mr. BROOKS. We are deeply interested in your testimony and we would like to suggest this: That at a later time perhaps since you will be here in Washington, the committee might want to call you back. You will be available.

Colonel MAAS. I have not finished. You have a witness here who has come at considerable trouble and inconvenience, and I am suggesting that you excuse me so that you can hear from him now and not put him to further inconvenience.

And I would like either to come back at a later time and finish my statement or if that is not possible, I will write up the rest of it and submit the other suggestions I have to make.

Mr. BROOKS. You will be available here in Washington?

Colonel MAAS. I will be available and I will keep in touch with Mr. Smart. Thank you very much, gentlemen.

Mr. BROOKS. Thank you very much, Colonel.

Gentlemen of the committee, we have here Mr. George A Spiegelberg, chairman of the special committee on military justice of the American Bar Association.

Where are you from, Mr. Spiegelberg?

Mr. SPIEGELBERG. I am from New York.

Mr. BROOKS. We are glad to have you, sir, and glad to have the statement as representing the views of the American Bar Association.

Mr. SPIEGELBERG. Well, it is a pleasure to appear before you gentlemen.

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STATEMENT OF GEORGE A. SPIEGELBERG, CHAIRMAN OF THE SPECIAL COMMITTEE ON MILITARY JUSTICE OF THE AMERICAN BAR ASSOCIATION

Mr. SPIEGELBERG. I perhaps might say that I am a veteran of both wars, in the last one having served on General Eisenhower's staff from December of 1943 until just before the end of the war in Europe.

I am a member of the bar of the State of New York and professor of law at New York University, as well as being the chairman of the special committee on military justice of the American Bar Association.

At the outset, I would like to say I think the congratulations of all those who are interested in adequate courts-martial reform should go to the gentlemen who are responsible for drafting this code.

I do not think that I have ever seen a more carefully drafted code. I think that the first long step forward and a very much needed step was taken when the Elston bill was drafted, although that bill almost necessarily had many defects. Many of those have been corrected in the present bill.

I think particularly the fact that adequate representation of the defendant at all stages of the trial, which was one of the things most strongly urged by the American Bar Association, has been admirably covered in the present bill.

In addition, I think we may have great hopes by the establishment of the Judicial Council—another recommendation most recently adopted by the American Bar Association, on February 1 of this year, in a report which I have submitted to the members of this committee.

There is, however, when all has been said, one fundamental defect, and when I use those strong words, I express the unanimous opinion not merely of my committee, but of the house of delegates of the association itself which has repeatedly stated that the very foundation of adequate courts martial is the divorcing of command control from the courts.

Now I want to make it perfectly clear before very briefly reviewing the history of legislation on that subject that there is no one who has had any connection with the military services who does not believe and believe emphatically that the enforcement of discipline is an absolute essential in any branch of the armed services.

It seems to me, however, there has been a great deal of confusion between the enforcement of discipline and the administration of justice. I do not think that the two have any necessary connection, and I shall attempt to enlarge upon those views in a moment.

I would like to call to the attention of the committee that the War Department's advisory committee referred to most frequently as the Vanderbilt committee appointed in March of 1946, held extensive hearings.

It came out with a report in the middle of December of 1946 and seven pages of recommendations. Four and a half pages concerned themselves with the control command over the courts.

The recommendations of the Vanderbilt committee were subsequently adopted by the entire assembly of the American Bar Association and by the house of delegates on three separate occasions, the last being in February of this year.

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The present bill, with all of its admirable aspects, leaves command domination of the courts exactly where it was before, with one exception which must be noted. I think article 37 provides that interference with the court by anyone in particular and by the commander specifically is prohibited. Unlawful interference is prohibited.

And according to my reading of the act, section 98 makes such interference an offense under the act.

Now, gentlemen, the difficulty with the administration of all courts-martial legislation in the services is that there has so often been a wide gap between a bill which is fair on its face, but in the administration of which loopholes have been found through which you can drive a team of oxen.

I think the same criticism may fairly be made of article 37. I do not believe that it will remedy the situation which created the greatest difficulty in World War I and which was questioned at length by among others Professor Morgan, the chairman of the present committee, after World War I.

I would like if I might—and if any of you gentlemen have the time—to recommend the article which Professor Morgan wrote in 29 Yale Journal, in 1919—30 years ago.

That article could have been written just as aptly after World War II because the defects due to command domination which stirred Morgan and others—Chamberlain and Winthrop—after World War I were repeated on an enlarged scale after World War II.

And we believe, that is the American Bar Association believes, that unless corrective legislation, effective corrective legislation, is passed by the Congress, we will have to wait until after World War III before the defects of this legislation become apparent as we believe them.

Mr. GAVIN. Pardon me for interrupting you at this point.

Mr. SPIEGELBERG. Yes.

Mr. GAVIN. Could you submit the article that you referred to for the record, so it could be incorporated in your remarks?

Mr. SPIEGELBERG. I have given Mr. Smart the recommendation of the American Bar Association as well as the statement, Mr. Gavin.

(The information referred to appears at p. 727.)

Mr. RIVERS. You have proposed amendments for this proposal?

Mr. SPIEGELBERG. Well, I have not them with me, Mr. Rivers. I can say this: With respect to the Elston bill we submitted amendments.

Mr. RIVERS. Yes.

Mr. SPIEGELBERG. That is ancient history.

Mr. RIVERS. Yes.

Mr. SPIEGELBERG. It would not be a difficult job and we are certainly willing to undertake the drafting of the corrective or what we hope and believe are corrective amendments and submit them to this committee within a very reasonably short time.

Mr. RIVERS. To the proposed legislation?

Mr. SPIEGELBERG. That is right.

Mr. RIVERS. But for the most part you believe that the proposed legislation is a step in certainly the necessary direction?

Mr. SPIEGELBERG. Without any qualification at all, sir. We think that this is a very fine piece of legislation, speaking generally. And I am directing my remarks to what I regard as the one remaining omission.

Mr. RIVERS. I see, sir.

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Mr. SPIEGELBERG. Which none the less we regard as being—the fact that it is only one—of great importance. In fact it is the foundation of the existence of military justice.

Mr. RIVERS. Well, your amendments would not be extensive anyway, would they?

Mr. SPIEGELBERG. They would not be extensive.

Mr. RIVERS. Mr. Chairman, in that connection I ask that Mr. Spiegelberg be asked to submit these.

Mr. BROOKS. Well, he will be glad to do it.

Mr. SPIEGELBERG. I will be very glad to do that, I can assure you, Mr. Rivers.

Mr. BROOKS. Mr. Spiegelberg, may I ask you this question?

Mr. SPIEGELBERG. Yes, sir.

Mr. BROOKS. What do you think of the suggestion made by Colonel Maas who just testified and also by the American Legion: Simply placing a criminal penalty at the end of article 37 to which you have just referred?

Mr. SPIEGELBERG. Well, I understand—and this is rumor and if I am wrong I am sure that you will correct me—that the American Legion even went so far as to suggest civil indictment and trial by a civil court.

Mr. BROOKS. Yes, before a Federal criminal court, as I understand it.

Mr. SPIEGELBERG. Yes.

Mr. BROOKS. With a penalty of $5,000 fine or 5 years in prison.

Mr. SPIEGELBERG. Yes. I think that would be unfortunate legislation. Now I cannot speak for the American Bar Association because we have not considered it, but I do think that you should only have civilian interference with the processes of military justice by your Judicial Council at the top.

In addition to that I think it would be ineffective, and I think it would be ineffective except as a threat, for this reason which is simply stated: The present bill says that the unauthorized influencing of a court is prohibited.

Now if anybody will tell me or tell a commanding officer where the line is to be drawn between authorized and unauthorized influencing of a court, I would be glad to have it. I do not know.

But I do know from experience in two wars that without violating a comma of article 37 I, as a commanding officer, could get any verdict I wanted from any court chosen from my command.

Mr. PHILBIN. How do you propose to close that gap?

Mr. SPIEGELBERG. I would propose to close that gap—when I say "I" I mean the association for which I speak—by an apparently simple procedural method which I can talk about with authority so far as the Army is concerned.

I have hesitation as far as the Navy is concerned because I am not experienced in their procedural difficulties which I understand they are urging.

As far as the Army is concerned, the simple method of doing it would simply be for the establishment of the Judge Advocate General, that is an officer's corps, now independent of command, at no lower than army level.

I am talking about the general case. To that man panels of officers available for court-martial duty would be transferred. That is, names would be transferred by commanding officers.

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Obviously the commanding officers would have to have the right to substitute other officers from those on the original list from time to time in order to meet the needs of their command.

If, let us say in the particular Army, an average-size army, there were eight divisions, you would have panels at the Army Judge Advocate General's headquarters from which where necessary—and I stress the "where necessary" and only where necessary—courts could be sent to any division composed entirely of officers from one or more other divisions.

Now, if the situation was serious enough there is not any reason why you could not in a theater, and I do not see why you could not in the zone of interior, raise that if necessary one echelon higher and make it Army group, because whatever anybody may say about the necessity of speedy justice as far as general courts are concerned, I have never heard of a general court being convened and sitting under fire. It is not an instantaneous process.

If you did it from Army group headquarters—and I think that would be necessary if at all in the rarest instances—you could have, for instance, to take an illustration from the last war, officers exclusively from Hodges' First Army sent to Patton's Third Army to try cases.

That was not a very long distance during the war and transportation or the shortness of transportation is in my opinion based on long experience so far as headquarters command are concerned more of a function than a reality.

Mr. BROOKS. Mr. Spiegelberg, let me ask you this: Suppose you have a task force and Navy men attached to an Army command, what would be your suggestions as to the fairness of acquiring all your panels from that Army level which would in effect exclude the Navy men?

Mr. SPIEGELBERG. Well, is that not the situation which you run into whenever you have a group from one arm of the service attached to and subject to the discipline of another arm of the service?

Mr. BROOKS. Well, where you select your panels from your local levels you might include Navy men.

Mr. SPIEGELBERG. You might from the higher, too, if it was a unit sufficient to have an independent command. I am not assuming that the officers should be chosen on this panel from Army commands alone. If there is a Navy command in the theater, subject to Army discipline, it would be the duty of the Navy commander to make his list of officers available just as it would be that of any division commander or area commander.

Mr. RIVERS. In civilian terminology, that would be a constant rotation of veniremen, so to speak?

Mr. SPIEGELBERG. Yes.

Now I want to emphasize the point, Mr. Rivers, that this would be where necessary. And I am not assuming it would be always or nearly always necessary.

But the instances in which commanding officers influenced courts is legion.

Now I am not suggesting they did it intentionally—wrongfully. I think quite the contrary. And I think I can point to pretty definite proof of that. When the Vanderbilt committee interviewed among others 49 general officers—and I think my figures are accurate—16 of those general officers affirmatively and proudly testified that they influenced their courts.

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They regarded it as part of their duty. How many of the remaining 33 actually did it, I do not know.

Mr. PHILBIN. What machinery would you suggest to prohibit or punish for that practice?

Mr. SPIEGELBERG. Well, I think punishing for the practice is the answer. I think the way to meet the issue is to take away from the commander the right to appoint the court.

Now I have never been able to see, and I have never heard a convincing argument that doing that would in any way interfere with discipline.

Mr. RIVERS. Well, that is a separate judge advocate set-up, is it not?

Mr. SPIEGELBERG. Well, you have your separate judge advocate set-up, Mr. Rivers. You have that now. And I trust it will be continued.

Mr. RIVERS. Under the Elston bill?

Mr. SPIEGELBERG. Right.

Mr. RIVERS. Yes, sir.

Mr. SPIEGELBERG. But you have no job for that separate corps to do which we had hoped would be the job given it and that is the supervision of the court.

Now the court is an instrument of justice or at least I assume that it is and after the charges have been referred by the commander and the commander appoints the trial judge advocate—the prosecutor—so that a speedy trial will be assured, it seems to me when that has happened the ends of discipline have been satisfied, with one addition, that after the court has reached its verdict the command should have the right to pass on that verdict with a view to clemency, because I think that the commanding general should say: "All right, this man has been convicted of a heinous offense, but he is more important to my command now for Army purposes than he is languishing in jail."

But beyond that why should the court have any further rights?

Now I think the matter can be very easily clarified by three simple questions. Do we believe that men in the armed services should receive a fair trial? The answer to that must be "yes."

We have written into the law now, and the Elston bill and more strongly under the proposed bill, that anyone who influences the court is committing a wrong.

Now if we admit that influencing the court is a wrong, why do we give the power to the commanding officer the only use of which can be to influence the court?

Mr. PHILBIN. But as I intimated before, we provide for punishment for attempting to influence the court or influencing the court.

Mr. SPIEGELBERG. There is a punishment, as I read it, Mr. Philbin, under the present bill. But I do not think that answers it. I just cannot realize—and perhaps my imagination is not vivid enough—any officer in a command preferring charges against the commanding officer under article 37.

I mean I really cannot. Therefore, I think it is ineffective.

Mr. BROOKS. That was the reason I think the Legion suggested it go to the Federal criminal court.

Mr. RIVERS. That is right.

Mr. SPIEGELBERG. Right. Then you really do have an interference, it seems to me, with discipline. Certainly, if you keep this

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convening power in the commander, if you have a timid commander, is he not going to say to himself, before he even convenes the court particularly where it is an important case with respect to, let us say an officer of some standing: "I better be pretty careful about this. This man may undertake to go to the civilian courts to have me indicted."

I personally think that in terrorem clause is the way to correct this very real defect in the present law. I do think the way to correct it is to put the supervision of the administration of justice where it belongs and that is in the legal corps.

Mr. RIVERS. In substance, then, Mr. Spiegelberg, you say if you will extend the coverage of that independence to the Elston bill and make it stronger in the proposed bill and stronger than the proposed bill—I am talking about the independence of the judge advocate—that is the way to correct it?

Mr. SPIEGELBERG. Well, the independence of the judge advocate himself, Mr. Rivers, is not the answer. The judge advocate has the independence now. What we should do to the judge advocate now is to say that instead of the commanding officer the Judge Advocate General should be the convening authority for the court.

Mr. RIVERS. I see.

Mr. SPIEGELBERG. In other words, we will give the Judge Advocate General an additional duty.

Mr. RIVERS. That is right.

Mr. SPIEGELBERG. Now, I have been working in this now for 3 years and I have been waiting to hear one argument on principle which will support the proposition that the commanding officer needs the power to appoint the court in order to enforce discipline.

Mr. RIVERS. Now, do you think that was discussed in Mr. Morgan's set-up and do you think that maybe by way of compromise that has not been included, or would you venture to form an opinion?

Mr. SPIEGELBERG. Are you asking me for my guess, Mr. Rivers?

Mr. RIVERS. Well, I do not want to embarrass you, sir.

Mr. SPIEGELBERG. You do not embarrass me because Professor Morgan is on record and has been for 30 years.

Mr. RIVERS. I see.

Mr. SPIEGELBERG. And his views, I believe, have not changed in that time.

Mr. RIVERS. Well, Professor Morgan is a practical man. When you get in these conferences you cannot always get everything you want, as you know.

Mr. SPIEGELBERG. I could not agree more.

Mr. RIVERS. Yes, sir.

Mr. SPIEGELBERG. And I am not for a moment criticizing Professor Morgan because I think he has done a grand job.

Mr. RIVERS. But I am just wondering whether the reason it was not incorporated in this proposal was because he was hitting his head upon a stone wall.

Mr. SPIEGELBERG. Well, if you want my guess, my guess would be that the Navy fancies that there are procedural difficulties involved due in large part to the fact that they have no legal specialist corps and I understand are not particularly anxious to have one, and without one I can see that there would be procedural difficulties.

Mr. RIVERS. You know the old saying: "As long as the light holds out to burn it is time for the vilest sinner to return."

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Mr. BROOKS. Well, now, coming back to your suggestions, how would they apply in the Navy and the Air Force?

Mr. SPIEGELBERG. Well, as far as the Air Force is concerned, I see no difference from the Army application. Unfortunately, as far as the Navy is concerned, I cannot speak. But I am sure that there will be no difficulty if you have a legal specialist corps or whatever the appropriate word may be in the Navy to administer these things.

Mr. RIVERS. Of course, we realize the Navy has different problems. For instance, the absolute dictatorship on a vessel is necessary. And I do not believe the establishment of a specialist corps would seriously disrupt the need for such authority when the occasion arises.

Mr. SPIEGELBERG. I heard what Colonel Maas said on that subject, and I cannot admit that discipline is more important in the Navy that it is in the Army.

Mr. RIVERS. Certainly aboard ship.

Mr. BROOKS. Well, justice is justice wherever you get it.

Mr. SPIEGELBERG. There is no question about it.

Mr. RIVERS. That is right. But I think it would not be disrupted by a legal specialist corps if we decide to set one up.

Mr. SPIEGELBERG. I do not know that it would. As I say, I do not speak with authority on the subject because my experience has been entirely in the Army. I do not see why it should.

Now the argument has been made over and over again: Outlying posts and distant stations. I cannot see that that creates any difficulty at all, really. Perhaps there is a slight difficulty as far as transport is concerned.

But I do know in Africa in the last war where you had outlying posts they had traveling courts. If they had it in the last war they can have it in the next.

Mr. RIVERS. That is right.

Mr. SPIEGELBERG. Now, it is true there may be inconvenience, but as the chairman stated, it seems to me that the opportunity of justice is more important than monetary inconvenience or even continuing inconvenience. And, of course, in peacetime there is no question at all. And we always lose sight of that fact.

I think I am correct in saying that the history of this country we have been at war approximately 20 years. That leaves a long time between wars. It seems to me although there may be some excuse for an unfair trial in wartime there is none in peacetime.

I am not justifying an unfair trial in wartime, but conditions are different. But in peacetime I can see no reason for it.

Now I do not want to repeat myself. I do want to say that after the most serious consideration the American Bar Association on four separate occasions has advocated this.

We sincerely hope that it will be written into the law and we will be glad to submit to this committee amendments, the required amendments, to the present bill which would affect that change, which will not be great.

It means simply the transfer from the commanding officer to the appropriate Judge Advocate General's officer of hte right to convene the court and to appoint assigned defense counsel.

If we really stop a moment to consider what the commanding officer does now, I do not see how we can help but be amazed. The com-

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manding officer in effect refers the charges. In fact he prefers the charges. Actually he does not make them, but has an officer in his command do that since if he actually made the charges himself he could not appoint the court.

He appoints the prosecutor. He appoints the defense counsel. And how often he has told the court: "You convict, you give him the limit, I'll fix the sentence."

Now, perhaps not in those terms and perhaps not as badly as that, but I am sure that witnesses have appeared before you and have testified to numerous personal experiences that they have had where they have attempted to do their sworn duty and render a just verdict and they either got a skin letter—now prohibited—which became part of their 201 file or at least they were removed from court-martial duty.

Now that should not be permitted and it should be effectively prohibited and as long as you leave in the commanding officer the power to appoint the court you have not effectively prohibited it.

And as I say, I am still waiting to hear the logical reason why the proposal that we advocate will to the slightest extent adversely affect discipline, the enforcement of which is essential in the armed services.

Mr. PHILBIN. Will it involve any undue delay in the trial of these cases?

Mr. SPIEGELBERG. Absolutely not.

Mr. PHILBIN. Did the traveling teams or courts that served in North Africa during the last war that you referred to involve any undue delay?

Mr. SPIEGELBERG. In fact, Mr. Philbin, it is very rare for a general court to have appear in a foreign theater during wartime a man accused of crime within 2 weeks of the time the charges are referred.

I do not say it has not happened. I say it is very rare. And that is a small lapse of time. It frequently runs much longer.

Mr. PHILBIN. Of course, we must keep in mind, too, that while a man is waiting for trial he is under confinement.

Mr. SPIEGELBERG. That is right.

Mr. PHILBIN. For an offense that perhaps he is not guilty of.

Mr. SPIEGELBERG. That is right, but the delay as a matter of fact, again does not interfere with discipline because after the charges are preferred and the man is apprehended he is lost to the command.

He is lost to the command until after the trial and the action of the commanding officer with respect to mitigation of sentence. And it does not make any difference from a time element or discipline element or command element where that man is tried by a court from his own division or from another division, except that if he is tried by a court from another division that court will not be subject to the desires of the command which has referred and preferred the charges.

Mr. BROOKS. Do you have a question?

Mr. HARDY. Mr. Chairman, I just wanted to observe, I think it might be extremely helpful to have Professor Morgan's slant on this particular subject.

Mr. SMART. He will be back here and will be able to give it in person.

Mr. SPIEGELBERG. Perhaps, Professor Morgan gave me the right to refer to a letter which he wrote to the secretary of the American Bar Association as stating his views. He felt that—

It was the opinion of our committee—

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and I am reading from his letter—

that it would be impracticable to have such appointments made by the Judge Advocate General's Department without the closest cooperation with the commanding officers concerned. This would necessarily mean that the function would be delegated to the local representatives of the Judge Advocate General's Department. It is unthinkable that he could be permitted to dictate to the commanding officers the assignment of duties of officers under his command.

That deals with the question of the reservation by the commanding officer of his right to substitute the names of officers who are available for court-martial duty from time to time—

In practice—

Professor Morgan says—

the choice would be limited to those officers whom the commanding general designated as available for such service.

There is no question about that.

And the result would be much the same as under the present practice.

That is Professor Morgan's first conclusion.

The professor sent me a copy of this letter and I wrote him stating in substance and perhaps more briefly than I have urged it before you gentlemen here exactly what I have said here.

And he wrote me on March 4:

As to the plan which you propose for eliminating command control, I agree that if each division commander is required to furnish a list of officers for court-martial duty to the Army commander and if there is a statutory provision that the Judge Advocate General will select the court for any division from officers of the other divisions you will secure much more freedom from command control of the trial court.

And he continues:

Otherwise I am still from Missouri.

Well, now, of course the proposition that I urged upon him was the proposition that would allow the officers from other divisions to be sent into the division where the man is to be tried.

And Professor Morgan has said that he believes that that, and I quote:

will secure much more freedom from command control of the trial court.

And that, as I said before, gentlemen, we regard as the sine qua non of justice in the services.

Mr. RIVERS. In that connection, in order to better secure those rights, would there be anything wrong with the fact in some sort of a preamble statement we say we reaffirm or affirm or subscribe to the principles that a man does not surrender his basic constitutional rights once he enters the armed services?

Mr. SPIEGELBERG. I think we might get into pretty serious trouble that way, Mr. Rivers, because he certainly surrenders many of them. If you put that into the preamble it may not do harm, but I think it is likely to confuse. If you put it into the law, he is going to demand a jury trial.

At least I would advise him to if I were representing him, and there was such a provision in the law.

Mr. PHILBIN. Do you think a jury trial in any circumstances is advisable?

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Mr. SPIEGELBERG. No, sir. As I said before, Mr. Philbin, I do not think that you should permit civilian interference.

Mr. PHILBIN. I am speaking of a jury trial of his own peers.

Mr. SPIEGELBERG. Oh, you are talking about the enlisted men on the court.

Mr. RIVERS. That is what I am talking about.

Mr. SPIEGELBERG. I am sorry, perhaps I misunderstood you completely. Frankly, and this has been discussed at length in the American Bar Association, we do not think that you get very far by having enlisted men on courts.

Mr. RIVERS. It is not going to hurt.

Mr. SPIEGELBERG. No, absolutely no.

Mr. RIVERS. I do not think so.

Mr. SPIEGELBERG. If it gives the enlisted man a feeling of confidence——

Mr. RIVERS. That is right.

Mr. SPIEGELBERG. That he might be able to have some of his peers on the court——

Mr. RIVERS. That is right.

Mr. SPIEGELBERG. Certainly the experiment can do no harm. But my shrewd guess would be that most of the enlisted men who serve on courts will either be master sergeants or tech sergeants with from 6 years' service up and that they will be more severe in their judgment of the man on trial than would officers.

But I agree completely. It does no harm and it may do good.

Mr. RIVERS. That is right.

Mr. GAVIN. Why would it necessarily have to be a sergeant or a master sergeant?

Mr. SPIEGELBERG. It would not. But, I say, my guess is that you will find in most cases the enlisted men on the court will be either first or second grade.

Mr. PHILBIN. Why should that follow, necessarily?

Mr. SPIEGELBERG. Well, I do not know why except that those are the enlisted men that the commander or the junior officer—the company commanders—know and they are the men that they actually select and recommend as being qualified for court-martial duty.

Mr. PHILBIN. Of course, in doing it, you could see that it would be a fair representation of all enlisted men, of all ranks, and so forth.

Mr. SPIEGELBERG. You could. But I think it is not more than a third now on the court and that would mean at most two on the average court, and it would be pretty hard to administer such a provision.

I do not say it could not be done. I think it is better not to try to specify——

Mr. PHILBIN. Has your group considered the jury trial of capital cases in the armed services? Have you given consideration to that question?

Mr. SPIEGELBERG. None. And, as I say, I cannot speak for the association on that.

Mr. PHILBIN. Well speaking for yourself, give your opinion about it.

Mr. SPIEGELBERG. Speaking for myself, I think it is a mistake. I think it is a mistake to introduce into the military system any civilian control review except at the top. And there I think equally important

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with review at the top is the fact that one of the functions of the proposed Judicial Council is to keep in touch with the situation continually and make annual reports on needed changes and reforms in the system.

There is the germ of continuing surveillance and reform. The importance of that cannot be overemphasized.

Mr. PHILBIN. And what sort of review at the top do you contemplate or propose?

Mr. SPIEGELBERG. I think the bill as drawn now is admirable, except for the fact that I would add to the Judicial Council's rights of review the right to review the facts as well as the law.

Mr. PHILBIN. I was going to touch on that.

Mr. SPIEGELBERG. Yes.

Mr. PHILBIN. You believe they should have the right to review the facts?

Mr. SPIEGELBERG. Most definitely.

Mr. PHILBIN. I am of that opinion, myself.

Mr. SPIEGELBERG. And while we are on that subject, I do think—I do not know whether it has been pointed out—that there is one minor defect in the review procedure. I do not think that the Judge Advocate General should be allowed to go shopping around among boards of review as he is under the present bill, that is the present draft, where the first board of review does not do what he wants. He has the right to go to the Judicial Council.

That is the only right he should be given.

Mr. PHILBIN. Can you see any possible objection to providing for a review of the facts?

Mr. SPIEGELBERG. None—if you leave it as it is now, except that in certain cases accepting the case is discretionary with the Judicial Council.

Mr. SMART. Mr. Chairman, may I ask one question?

Mr. BROOKS. Mr. Smart.

Mr. SMART. I want to point out to the committee what the situation is as to corps in respective services as of today. As you know, the Congress created a separate corps with a separate promotion list for the Judge Advocate General of the Army.

Mr. RIVERS. That is right.

Mr. SMART. Almost simultaneously with the signing of that bill, as a matter of fact the day after that bill was signed, the President signed another bill which created the Office of Judge Advocate General of the Air Force. Due to a statutory conflict the question has arisen: Does the Air Force also have a separate corps of judge advocates?

The current interpretation of question is that they do not have a separate corps and the Air Force as of today is not functioning with a corps.

Mr. GAVIN. It is functioning, though, because I have a case up right now.

Mr. SMART. Not as a corps.

Mr. GAVIN. Not as a corps, but they are functioning.

Mr. SMART. Definitely, the Air Force has jurisdiction and is trying all of its own court-martial cases. But it does not have a corps.

Mr. PHILBIN. What legal effect does that have, the fact that they do not have a corps, in the court-martial proceedings?

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Mr. SMART. It has no effect except that Air Force legal officers (
not have the same judicial independence as officers in the Jud
Advocate General's Corps of the Army.

Now with that preface, I would like for Mr. Spiegelberg to go
record here one way or the other: Does he advocate a corps of judg
advocates for the Air Force, the same as we now have for the Army

Mr. SPIEGELBERG. The answer is that there obviously must be on

Mr. RIVERS. That is right.

Mr. SPIEGELBERG. You cannot have the Justice Department of th
Army divided into two halves: Independent in the Ground Forces-
I am still talking in old terms.

Mr. RIVERS. That is right.

Mr. SPIEGELBERG. And subject to the domination of command
completely subject to the domination of command, in the Air Force

Mr. RIVERS. That is right.

Mr. SPIEGELBERG. If they are independent in one, they should b
in all.

Mr. BROOKS. You think that is a house divided against itself?

Mr. SPIEGELBERG. I think it will certainly fall, Mr. Chairman
whether it is a house divided.

Mr. BROOKS. I would like to ask you one question before it is to
late. The practice of comity has grown up in time of peace between
the armed services and the civilian courts in reference to major crimes

Mr. SPIEGELBERG. Yes.

Mr. BROOKS. For instance, very often the armed services does not
desire to try the individual who may be a member of the armed service
but prefer to have the Federal courts do that. Do you think it is
necessary to put anything in this Code of Military Justice to cover
that situation?

The man who is tried in a Federal criminal court is tried and if he
is convicted it seems to me that should constitute jeopardy, and to
try him again would be double jeopardy.

Mr. SPIEGELBERG. I should think that would be true without
question.

Mr. BROOKS. But I do not think there is anything in the law that
says that.

Mr. SPIEGELBERG. I would be amazed if the Supreme Court did
not so interpret it. Now that is a horseback opinion.

Mr. RIVERS. Well, if a fellow is convicted in a civil court this
automatically discharges him from the service, if he goes to jail.

Mr. SPIEGELBERG. I thought the chairman's point was, could they
try him over again in a military court.

Mr. BROOKS. Yes.

Mr. SPIEGELBERG. Now, you have the dual prosecution in that
conviction in the Federal court does not necessarily bar prosecution
in the State court.

Mr. BROOKS. You have double jeopardy there.

Mr. SPIEGELBERG. But it seems to me the courts martial have been
held to be Federal courts by the United States Supreme Court.

Mr. BROOKS. The point I had in mind was this: Do you recom-
mend placing any provisions on this covering that situation?

Mr. SPIEGELBERG. Well, Mr. Chairman, if it is necessary to provide
against double jeopardy I certainly think provision should be made.
I am not in a position to say whether the present act is not adequate
on the subject:

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Mr. BROOKS. You would not want to suggest anything covering e field of comity between the Federal court and the military courts time of peace covering major offenses?

Mr. SPIEGELBERG. Well, now, on the double jeopardy question or the question of the right of the military court to refer certain crimes r trial to civilian tribunal, always which I think it is a very healthy ing.

Mr. BROOKS. The discretion of a commanding officer to refer it or e discretion of the accused to require it.

Mr. SPIEGELBERG. I think I would rather leave it to the former, ather than the latter.

Mr. BROOKS. You mean to the commanding officer?

Mr. SPIEGELBERG. That is right. I think the discretion should be the accusing power as to whether the trial should be a military ial or as has been customary and I thought required—I may be in ror—in certain cases, of which murder was one, transfer to the ivilian courts for trial in peacetime.

Mr. PHILBIN. And you believe double jeopardy, when it relates to he service—in civilian courts or within the service itself—should be rohibited.

Mr. SPIEGELBERG. Absolutely.

Mr. SMART. Mr. Chairman, may I make one more observation efore you adjourn. The question of enlisted men on courts was liscussed a moment ago. I would like to advise the committee that here have been approximately 15 cases, world-wide, throughout the Army, since February 1 where enlisted men sat as members of the court.

Mr. Larkin or some representative of the Army will advise this committee as to the results of those cases.

I would like to further tell you that during the month of October I made a trip for the committee and went to seven Army and Air Force installations and interviewed 930 enlisted men on the question as to how they felt about enlisted men on courts.

I have all of that information tabulated and will give it to the committee at the appropriate place when we read the bill section by section.

Mr. BROOKS. Any further questions?

Mr. GAVIN. In summing up your presentation here, you think that command control is the most important thing in this whole piece of legislation?

Mr. SPIEGELBERG. Definitely, Mr. Gavin.

Mr. BROOKS. Thank you very much, Mr. Spiegelberg.

Mr. SPIEGELBERG. Thank you, sir.

Mr. BROOKS. You made a very fine statement. We appreciate it.

(A prepared statement follows:)

PREPARED STATEMENT OF GEORGE A. SPIEGELBERG, CHAIRMAN OF THE SPECIAL COMMITTEE ON MILITARY JUSTICE OF THE AMERICAN BAR ASSOCIATION, BEFORE THE SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES, HOUSE OF REPRESENTATIVES, WITH RESPECT TO THE PROPOSED UNIFORM CODE OF MILITARY JUSTICE (H. R. 2498)

Mr. Chairman and members of the committee, my name is George A. Spiegelberg. I appear before this committee as the duly accredited representative of the American Bar Association, being the chairman of that association's special committee on military justice. My remarks will be addressed to the

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major reform still required in military justice on the assumption that H. R. 24 becomes law.

I should say by way of introduction that I am a veteran of both World War I and II and that in the latter war I served overseas for 30 months as a staff officer, the last 15 months of such service having been on General Eisenhower's staff; that I was retired from the service for line of duty physical disability after for a year and one-half prior to the time of my retirement I held the rank of colonel General Staff Corps. I have been a member of the bar of the State of New York since 1922 and a professor of law at New York University since 1924. I am also engaged in the practice of law in New York City.

With the permission of the committee I should like to place in the record a copy of the report submitted to the house of delegates of the American Bar Association by my committee, which report was unanimously adopted on February 1, 1949, by the association at the meeting of its house of delegates held in Chicago, Ill. I should like to direct the attention of this committee to the fact which is made entirely apparent by the annexed report that for the last 3 years the American Bar Association has consistently and repeatedly urged the Congress of the United States to remove court martial from the domination of commanders.

Before discussing the need for this basic reform I would like briefly to state that except for some minor defects which I have no doubt have already been called to your attention, H. R. 2498 is a very decided step forward in comparison with existing legislation. Without going into detail it is not amiss to point out the following improvements which will be effected if the proposed code is adopted.

(*a*) The basic rules for the administration of justice in all of the armed services are made uniform.

(*b*) The law member and counsel of a general court must be trained lawyers.

(*c*) Grounds for review have been broadened and simplified. The establishment of a civilian judicial council in which is vested the duty of annually surveying the manner in which military law is administered and making recommendations in respect thereto may be particularly noteworthy.

Having said all this the inescapable fact remains that the keystone of the arch of reform has been omitted. I have already alluded to the fact that for 3 years the American Bar Association has pointed out that if a court martial is to be an instrument of true justice it cannot be allowed to remain subject to command control. If we are to achieve justice or an approximation of justice it is essential that the appointment of the court, the prosecutor and assigned defense counsel should not be made by the commanding officer from officers in his own command. That is the system under existing law. It is the system proposed in H. R. 2498. It is wholly indefensible. It vests in the commanding officer the appointment of those who are to act as judge, jury, prosecutor, and defense counsel. The futures of all these men are subject to the control of the commanding officer who has appointed them to discharge these diverse functions. In theory it is too much to hope that command will not bend the views of its subordinates to meet its desires of the moment. In practice there have been and are now such occasions and there will continue to be such occasions under the system proposed in H. R. 2498 which contains no suggestion of the separation of judicial power from the chain of command.

That the influencing of courts by commanding officers is wrong is recognized by the proposed code, section 37, which nominally prohibits such action. The difficulty with the prohibition is that it is not effective.

The power of command to influence the court can only be justified if the use of the power is proper. Article 37 of the proposed code labels the exercise of such power as improper. Only by withdrawing the power to influence the court from command can we be sure that it will not be exercised in the future as it has been in the past. The proposed bill in no way withdraws the power of command to influence the court.

I believe there has been a complete misapprehension as to the nature and effect of the remedy that we suggest in order to correct this basic defect. I trust that my appearance here today may at least, in part, dispel the confusion.

The remedy suggested is a simple one: the power to convene the court, to appoint assigned defense counsel and to order the sentence executed would be taken from the commanding officer and vested in the Army Judge Advocate General's Department or its equivalent in the other services. Commanding officers who under existing law convene the court would be required to make available to Army or higher headquarters a panel of officers available and qualified for court-martial service. From such panel the Judge Advocate General at Army or higher headquarters (or equivalent echelons in other services) would select the

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eneral court to adjudicate the cases in a particular division. That court could, f course, be composed of officers selected entirely from divisions other than the ivision in which they are assigned to preside. In that way and in that way alone an you have a court composed of officers not subject to the domination of the ommander who has directed the trial of a man in his command. The command-ng officer would, of course, have the right to add names to or withdraw names rom the panel of officers available for court-martial service as required by the eeds of his command.

The proposed system would in no way interfere with his command function nor ould it in any way interfere with the commander's necessary obligation of enforc-ng discipline. Influencing a court to find a verdict of guilty on inadequate or no vidence cannot be justified at least in the armed services of this country as a roper method of enforcing discipline. Influencing a court to impose fantastic entences has no greater justification. Past experience has shown that under the ystem which H. R. 2498 proposes to continue the commander's power improperly o influence the court has been too often exercised. It is as important that ustice is seen to be done as that it is done. So long as the judicial process in the rmed services is administered by men entirely dependent for promotion, efficiency ating, leave, and quarters upon the man who appoints them, so long will the judicial system of the armed services be a system of justice in name alone.

Attempts to effect the reforms here urged were made by Chamberlain, Morgan, Winthrop, and Ansell among others immediately after World War I. They failed then because Congress was persuaded by the same arguments now being made that it was unnecessary to control command influence. World War II made it clear beyond question that the passage of time and the "reforms" effected after World War I had done little if anything to make the court-martial system a vehicle for justice. The arguments advanced against reform 30 years ago if now successful will result in the same justifiable complaints in the next war as we have witnessed in the last two. How often must error be repeated before it is corrected?

This committee will bear in mind that with minor changes military justice today is the military justice of eighteenth century England—a system devised for armed services described by the Duke of Wellington in 1811 in the following words: "None but the worst description of men enter the regular service. The scum of the earth who have all enlisted for drink."

Today's system of military justice is as inapplicable to the citizen's armed services of today as the duke's remarks are to the men in those services today.

The critics of reform take the position that the armed services of the country must subordinate everything to the winning of wars. With that argument I have no quarrel except to remark that it is totally inapplicable to the subject under discussion. A court-martial system that does not approximately effect justice, far from enforcing discipline destroys morale. So long as the power wrongfully to influence courts remains in the commander, so long will that system fail to approximate justice. The function of discipline is achieved when a charge has been referred for trial and the commanding officer appoints and controls the prosecutor so as to insure a speedy and effective prosecution. From that point on command interference except to exercise clemency serves neither discipline nor justice.

Critics of reform also point to the fact that the existence of the present system is almost as old as the Republic. That statement is true but it would seem to me that in and of itself the statement indicates the need for reform rather than the retention of a system so old that its age is its only virtue. It seems to me that it would be as reasonable to argue that flogging which was once the common service punishment should be again approved as it is to argue that any outmoded part of the system of military justice such as the domination of courts martial by command should be continued merely because it has always existed.

Finally, I would like to point out that the association for which I speak is interested neither in creating a lawyer's paradise out of the system of military justice nor of permitting civilian interference with the trial of military crimes. The reform advocated does neither.

I have been informed, although I am unable to state on knowledge, that the services do not object in principle to the divorce of command from the control of courts martial. If that be so, no argument remains to prevent this Congress from adopting a system which will permit military justice to be justice in fact as well as name.

For the foreseeable future we are faced by the necessity of maintaining armed forces at least five times greater than those maintained before the recent war. The armed forces of the future, no matter how they may be raised, will be com-

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posed of the physically fit youth of the country. The first contact with any judicial system for the overwhelming majority of these young men will be their experience with the administration of military justice. Is it too much to ask that the system to which they are exposed be reasonably designed to achieve justice? Neither the system now in effect nor the one proposed adequately guarantee a proper administration of justice.

I desire on behalf of the American Bar Association and on my own behalf to express my appreciation for your courtesy.

Report of the Special Committee on Military Justice

To the House of Delegates of the American Bar Association:

The undersigned, the Special Committee on Military Justice, of the association appointed by action of the house of delegates, on September 6, 1948, hereby submits its report and a brief statement of the reasons why action is requested at this time.

The War Department Advisory Committee on Military Justice, appointed by the Secretary of War, on March 25, 1946, upon the nomination of this association, made its report on December 13, 1946, advocating certain drastic changes in the existing Articles of War. Certain of the recommendations were adopted in legislation, which subsequently became law, the bill referred to being commonly known as the Elston bill (H. R. 2575, 80th Cong.).

By far the most important recommendations of the War Department's Advisory Committee on Military Justice were, however, totally ignored, and this association, on two subsequent occasions, referred to these omissions and directed the attention of Congress to the necessity of curing the defects in the Elston bill.

On September 26, 1947, the assembly and the house of delegates of this association passed the following resolution:

"*Resolved*, That the American Bar Association urgently recommends the passage, by the Congress, and the approval by the President, of legislation separating military justice from command, and vesting final reviewing authority by the military, and final authority to mitigate, to remit, and to suspend sentences in the Judge Advocate General's Department, without in any way limiting other existing powers to mitigate, remit, or suspend sentences."

On or about February 21, 1948, the house of delegates reiterated the prior resolution and, in addition, adopted the following resolution:

"*Resolved*, That said bill (the Elston bill) should be further amended so that both the trial judge advocate and defense counsel must be lawyers and, where available, members of the Judge Advocate General's Department."

Numerous other groups of veterans and of lawyers supported the stand taken by this association. Nonetheless, the Elston bill became law through its adoption by the Senate of the United States, on June 9, 1948.

In June of 1948, as a result of the bill unifying the armed services, the Secretary of Defense appointed a committee to draft a Uniform Code of Military Justice. That bill has not as yet been published, but it will be published and submitted to the Congress before the 15th of February 1949. We, therefore, submit that it is of the greatest importance that the house of delegates of this association should again, in clear and unmistakable terms, state its position and authorize its appropriate officers and members to use every proper effort to see that a bill effecting real reforms in our court-martial system becomes law. To that end, your committee respectfully submits the following preambles and resolutions, and earnestly recommends their adoption at the current meeting of the house of delegates.

Whereas the Advisory Committee on Military Justice of the War Department, appointed by the Secretary of War, on the nomination of this association, devoted the major part of its report to the recommendation that the conduct of courts martial should be withdrawn from the domination of command; and that the conduct of courts martial should be in the hands of trained lawyers; and

Whereas this association, on September 26, 1947, and on or about February 21, 1948, supported the recommendations of the War Department's Advisory Committee on Military Justice; and

Whereas The War Department substantially ignored those recommendations and succeeded in procuring the adoption of H. R. 2575, commonly known as the Elston bill, which signally fails to provide for the reforms advocated by the War Department's Advisory Committee on Military Justice; and

Whereas, there will, in the immediate future, be introduced into the Congress a new bill for the establishment of a Uniform Code of Military Justice; and

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Whereas it is vital to insure a fair and impartial trial of those citizens subject to military justice; and

Whereas the present system of military justice fails so to do in that it is indefensible and contrary to all concepts of justice that the authority to appoint the prosecutor, the defense counsel and the court, and the right to pass upon the judgment of that court be vested in the same person; and

Whereas there can be no justification for the influencing of courts martial by the commanding officer, but there can be no other justification for the rejection of the Advisory Committee's recommendation with respect to the checking of command control, except the continuation of the right to influence courts martial by the commanding officer: Now, therefore, be it

Resolved, That this association urge the Congress of the United States to vest in an independent Judge Advocate General's Department the following powers, now vested in the commanding officer:

(*a*) The exclusive right to appoint general or special courts martial;

(*b*) The exclusive right to appoint assigned defense counsel;

(*c*) The right to review the action of general and special courts martial. A right to mitigate the court's sentence shall remain in the commanding officer. And be it further

Resolved, That in all general courts martial the defense shall be adequately represented in all stages of the proceeding, including trial and review, and appropriate legislation should be enacted to make such representation effective, which legislation should include provision for independent civilian review; and be it further

Resolved, That in all general courts martial, both the prosecutor and assigned defense counsel shall be lawyers; and be it further

Resolved, That, so far as feasible, special courts martial shall be surrounded by all of the safeguards surrounding general courts martial: *Provided further, however*, That no special court may grant a bad-conduct discharge unless all requirements applicable to a general court have been observed; and be it further

Resolved, That this association recommends legislation establishing an Advisory Council in the Office of the Secretary of Defense, consisting of nine civilians having predominantly civilian background and experience, and three service members representing the legal offices of the three services—the civilian members to be appointed by the President of the United States and to serve, without salary, though entitled to a per diem and traveling expenses, which said council shall be required to report annually to Congress, and to that end it shall be supplied, by the Secretary of Defense, with the necessary research and clerical staff; and be it further

Resolved, That for and in the name of this association, its appropriate officers, governors, delegates, and members, its Special Committee on Military Justice do all acts and things necessary and proper including the right to appear before committees of the Congress and any other tribunal, to urge the enactment into law of the amendments above suggested, and such other amendments consistent with the foregoing as will make the courts-martial system of the armed services of the United States a true system of justice, before whose tribunals the citizens of the United States will, so far as may be possible, be assured of a fair and impartial trial.

Respectfully submitted.

GEORGE A. SPIEGELBERG, *Chairman.*
STEPHEN F. CHADWICK.
RICHARD K. GANDY.
DOUGLAS HUDSON.
ARTHUR JOHN KEEFFE.
WILLIAM H. KING, Jr.
JOHN McI. SMITH.

JANUARY 29, 1949.

Mr. BROOKS. The committee is adjourned until Monday morning at 10 o'clock.

(Whereupon, at 11:55 a. m., the committee adjourned until Monday, March 14, 1949, at 10 a. m.).

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UNIFORM CODE OF MILITARY JUSTICE

MONDAY, MARCH 14, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The committee met at 10 a. m., Hon. Overton Brooks (chairman of Subcommittee No. 1) presiding.

Mr. BROOKS. The committee will please come to order.

We are a little slow getting in this morning, gentlemen, but the committee is going right ahead. We will call on Mr. John Williamson, representing the Veterans of Foreign Wars.

Just come forward, Mr. Williamson, and have a seat. We are glad to see you again.

Mr. WILLIAMSON. Glad to see you, sir.

Mr. BROOKS. Glad to have you before the committee.

Mr. WILLIAMSON. Mr. Chairman, I would like to yield my time to Mr. Paul Wolman, a prominent attorney in Baltimore, Md., and a past commander in chief of the Veterans of Foreign Wars and presently chairman of our national security committee. He has a statement that he would like to present.

Mr. BROOKS. Mr. Wolman, will you come forward, sir? Just have a seat, sir.

Mr. WOLMAN. Yes, sir.

Mr. BROOKS. We will be glad to hear from you.

You have a prepared statement, have you not?

Mr. WOLMAN. Yes, Mr. Brooks. I thought it might facilitate time by jotting down the thoughts that I had. And if there are any questions that either you or the members of the committee would care to ask and I can answer them, I will be happy to try my best.

Mr. BROOKS. Fine, sir.

Mr. WOLMAN. For the sake of your record, my name is Paul C. Wolman—W-o-l-m-a-n. I am an attorney, with offices in the city of Baltimore and am a member of the bar of the State of Maryland and also the District of Columbia.

I have served as a commander in chief of the Veterans of Foreign Wars and during the past several years as chairman of some of the other committees. My service was in World War I primarily and in the guard during World War II.

I served as G–2 on the staff of the Maryland Guard.

Mr. BROOKS. And are still very actively interested in the Veterans of Foreign Wars.

Mr. WOLMAN. Yes, sir; I have tried to keep up my activity in that, sir.

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STATEMENT OF PAUL C. WOLMAN, BALTIMORE, MD., CHAIRMAN, NATIONAL SECURITY COMMITTEE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman and members of the committee, the Veterans of Foreign Wars of the United States is deeply appreciative of the privilege granted by your committee to allow its representatives to appear before you and present the views of its membership, composed as it is of men all of whom have seen foreign service in times of war.

The national security committee, which I have the honor to head, is keenly interested in the promulgation of a uniform code of military justice which will be workable and bring about a fair system for its administration.

My committee, in addition to myself, is made up of Maj. Gen. Charles C. Curtis, of Allentown, Pa., Maj. Gen. Merritt A. Edson, holder of the Congressional Medal of Honor, United States Marine Corps; Brig. Gen. Bonner Fellers, who was in the Pacific during the greater part of the service during the last war; Maj. Gen. William B. Gunther, who served as security officer for the Second Service Command during the last war and who has been in the service for many, many years; Col. Harvey L. Miller, who is retired from the United States Marine Corps and who had service in the Navy likewise; Orville A. Park, Jr., an attorney who has been active in the American Bar Association and also in the International Bar Association—and, by the way, he served as the official representative of the American Bar Association at Geneva during the past summer—and Capt. G. Angus Sinclair, who was recently retired after having had a very fine service. They fairly represent a good cross section of men from the various branches of the armed forces.

It is a recognized fact that H. R. 2498, now under discussion, is a compromise between the Army and Air Forces military justice, where the advances in past years have been comparatively rapid, and the procedure of the Navy, which has made but little progress since the act of 1862. For that reason it would perhaps be unreasonable to expect a well-polished and perfectly smooth organization overnight.

It is our opinion that the proposed code is an improvement over the present system wherein each arm of the service has its own. There are, however, a few observations which we desire to make and we tender them to you in the form of constructive criticisms, with the hope that they may be of some value to you.

We fear that there may be a possibility for injustice in the operation of the authority and power granted under article 4, wherein an officer may be dismissed by administrative order of the President, even after he has been acquitted by a general court martial, particularly in view of the authority granted to the President in article 140, page 93 of H. R. 2498, wherein the President may delegate any authority vested in him under this code and provide for the subdelegation of any such authority.

In part III, article 15, dealing with nonjudicial punishment, it is noted that the same can be meted out without the right to demand trial. While this procedure is now permitted in the Navy, it is not allowed in the Army.

In our judgment, right to trial should never be refused. Then, paragraph (2), subparagraphs D, E, F, and G add punishment "bread

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and water." While it is true that an appeal is provided for, it is quite probable that the punishment will have been completed before the appeal could be decided.

Article 17 grants jurisdiction to each armed force over all persons subject to this code. In other words, the Navy would be given general authority to try an Army man and vice versa. It is the opinion of many that a probability of harsh treatment might be meted out as a result thereof, due to a frequent dislike of one service for the other.

Those who have been interested and pleased over the authority to have enlisted persons sitting upon courts martial fear the inclusion of "unless competent enlisted persons cannot be obtained on account of physical condition or military exigencies," as noted in article 25, subparagraph (c). They fear that this provision might keep some officers from placing enlisted men upon court.

In article 32, subsection (e), while the accused is given the right to be represented at investigation, "upon his request," it appears to me that we might follow the procedure used in our Federal courts wherein the accused is definitely advised of his right to have counsel. In that manner there would be no possibility of the accused not getting all of the protection intended for him.

The question has frequently been propounded to me and I would, therefore, pass to you the inquiry as to reason for special consideration being given to "general or flag officers" over all other officers and even enlisted persons, as set forth in article 66 (b), 67 (b) (1), and 71 (a).

The thought has frequently been expressed that it would be advantageous to establish an independent Judge Advocate General's Corps in each of the three services, or one corps operating out of the Department of Defense. Members of such independent corps could operate on most echelons.

As an example, a man may be charged by a regimental commander, whereupon the charges could be referred to the Judge Advocate General on the division level, who could appoint the court from a panel previously submitted to him by the division commander for the whole division, and he could also appoint the trial counsel and the defense counsel unless the accused desires to designate his own counsel.

Such a plan would eliminate the criticism that the commanding officer orders the arrest of the accused, charges the accused, appoints trial counsel, defense counsel, and then reviews the proceedings.

My observations have been made from experience and contact with men in the armed forces, as a member and officer in the Veterans of Foreign Wars of the United States and from my experience as an actively practicing attorney for nearly 30 years, of which time about 5 years were spent as a prosecuting attorney in the city of Baltimore, Md.

It is my hope that the suggestions offered and criticisms made may be of some constructive value to your committee, which is giving its earnest and careful consideration to the uniform code of military justice referred to in our discussions as H. R. 2498.

In conclusion, may I again thank you for your indulgence and hope that the results of your labors will bring about the type of code which will assure full and complete justice to those who may be charged with violations thereof and at the same time result in the preservation of the orderly discipline and smooth operations of the various components which make up our Military Establishment.

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Mr. BROOKS. Mr. Wolman, in reference to your first suggestion there regarding the right of a trial in cases where the command is authorized to make limited punishments not exceeding, I think, 7 days——

Mr. WOLMAN. Yes, sir.

Mr. BROOKS. What is your idea further on that? Is your idea that the commanding officer shall have the right to pass judgment in these limited cases, subject to the right of the enlisted man to appeal to a court?

Mr. WOLMAN. No, sir. What I have in mind primarily comes under what we refer to now as company punishment, if that is the part that you are inquiring about, Mr. Brooks.

Mr. BROOKS. That is right; company punishment.

Mr. WOLMAN. Under the company punishment plan the man may ask for a trial under our Army system. And he is entitled to that trial. But under the bill as drafted—as I read it anyhow—he does not have that right to ask for a trial. I think that right to trial should never be taken away from a person.

Even in the most minor offenses in our regular civil courts, the first question that is asked by a police magistrate is: "Do you wish to have a trial by jury or are you satisfied to have me try it?" and so on.

Mr. BROOKS. You would give the commanding officer no right to punishment.

Mr. WOLMAN. I would give him the right to punish, unless the accused desires to be tried. If the accused desires the right to be tried, I do not think that should be taken from him.

Mr. RIVERS. Mr. Wolman, let me get this straight. I think it is your intention—I think it is in article 4——

Mr. WOLMAN. Just a second.

Mr. RIVERS. Anyway, the thought that our chairman brought up: He has a trial as a matter of right unless he waives it.

Mr. WOLMAN. That is right; I think he should have that right.

Mr. RIVERS. And you say that is omitted in the proposed legislation?

Mr. WOLMAN. No, sir. In part III, article 15—that is the one that I referred to in here.

Mr. RIVERS. That is what I am talking about.

Mr. WOLMAN. That is right, sir.

Mr. RIVERS. He has the right to demand trial. He has a trial unless he waives it.

Mr. WOLMAN. He does not under this, as I read this, sir.

Mr. RIVERS. I see, you complain about that omission.

Mr. WOLMAN. That is right, sir.

Mr. RIVERS. In other words, you want us to write in this bill that a trial is forthcoming in the ordinary sequence of events, unless it is waived by accused.

Mr. WOLMAN. That is right.

Mr. RIVERS. And you want that guarantee written in the legislation.

Mr. WOLMAN. Yes, sir; I think that should be.

Mr. RIVERS. I just want to get your contention.

Mr. WOLMAN. Yes, sir; that is my view, sir.

Mr. RIVERS. I see.

Mr. BROOKS. Mr. Elston, any questions?

Mr. ELSTON. No.

Mr. BROOKS. Mr. deGraffenried?

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Mr. DEGRAFFENRIED. No, sir.

Mr. BROOKS. Mr. Anderson?

Mr. ANDERSON. No questions.

Mr. BROOKS. We certainly thank you very much for a very fine statement.

I am going to personally study it, because you reach a number of points there that I would like to follow through.

Mr. WOLMAN. And may I say, sir, that Mr. Williamson, whom I am sure you all know, would be very glad to meet with you or any of the other members of the committee to further expound those thoughts.

Mr. Williamson, by the way, is a captain in the Marine Reserves and has had quite a little experience during the recent war. I feel like an old man on most of those now——

Mr. RIVERS. If we call him, is he going to give us what in his opinion is considered the reason that these were omitted? I notice in your written statement you say it is obviously a compromise. I think most legislation is.

Mr. WOLMAN. Oh, yes.

Mr. RIVERS. I accept that.

Mr. WOLMAN. Mr. Rivers, I have no objections to a compromise. Having practiced law all my adult life, I know that most accomplishments are as a result of a compromise. The only thing that does worry me, sir, and the members of my committee, is the possibility in arriving at a compromise sometimes we are a bit hasty and leave out some rights and privileges that the lowest grade of enlisted man should be entitled to. I do not think we should ever deprive him of that.

Mr. RIVERS. For a piece of legislation which contemplates a change of the whole existing system, there is bound to be some place, somewhere, that sections vital to the legislation are omitted.

Mr. WOLMAN. Oh, very true, sir.

Mr. RIVERS. Yes.

Mr. WOLMAN. And nobody appreciates that any more than I do, sir.

Mr. BROOKS. Mr. Williamson will be available and the committee, I know, will be glad to call on him a little later on when they get into this, if they need him.

Thank you very kindly.

Mr. WOLMAN. Thank you, sir.

Mr. BROOKS. I call Mr. Clorety, national vice chairman, American Veterans Committee. Mr. Joseph A. Clorety, Jr.

STATEMENT OF JOSEPH A. CLORETY, JR., VICE CHAIRMAN OF THE AMERICAN VETERANS COMMITTEE

Mr. CLORETY. My name is Joseph A. Clorety, Jr. I am the national vice chairman of the American Veterans Committee.

Mr. Chairman and members of the committee, the American Veterans Committee—AVC—heartily endorses H. R. 2498. Representatives of AVC who have testified before previous Congresses on the problem of assuring justice to all of the members of the armed services were extremely critical of such bills as H. R. 2575 in the Eightieth Congress.

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They felt that such bills might aptly be described as a new paint job rather than the complete new model which AVC then and now deems indispensable. H. R. 2498 does fulfill our prerequisite, namely, a code uniform in substance, interpretation and application.

We believe that enactment of this bill will fulfill three major purposes. It furthers the fundamental striving of the American people for insuring justice to all citizens, and specifically to those who by reason of wearing their country's uniform particularly merit the benefits of justice.

As veterans, all of whom are honorably discharged, our membership are fully aware of the deterioration of morale, efficiency and effectiveness when justice miscarries in the armed services. This bill will go far to minimize such injustice.

Thirdly, we believe that assurance such as this bill provides of adequate protection of the process of justice combined with modernization of those processes, will serve to stimulate voluntary recruitment.

We recognize that the members of this committee have heard much of the defects in military justice, especially as applied during the last war. I mention those basic aspects which convinced AVC that only sweeping reform would assure true military justice because we believe that this bill substantially eliminates the major faults in the old system.

Among these were the uneven administration of military justice between services, between commands in the same service, and in many cases between units in the same command.

The second major evil corrected by this bill was the complete lack of trained legal counsel which characterized all too many courts martial, and which was particularly aggravated when the accused did not enjoy qualified legal advice and representation despite the fact that the prosecution was conducted by a trained lawyer.

The third major source of injustice lay in the virtually unchecked power of the convening authority to subvert justice to his own concept of the command function. The pending bill does not appear to impair the essential requirement for successful performance of the command function, while surrounding its exercise in disciplinary practices with such safeguards as requirements that the commanding officer receive the advice of legal counsel at each significant step in a case, and otherwise through preventing any misguided commanding officer from exerting improper influence on the members of a courts martial.

In addition to these significant reforms suggested above, AVC is particularly pleased by a provision for a judicial council made up of highly qualified civilian lawyers. In substance, this provision represents fulfillment of a reform which AVC urged most strongly in its testimony before the Vanderbilt commission and before the appropriate congressional committees during the period since the last war.

We trust that the committee will report the bill in substantially its present form and that it may speedily become law.

We recognize that the act cannot become effective within 30 days after approval of this legislation, but we would suggest that the committee consider amending section 5 of article 140 to permit the act to be placed in effect at an earlier date than in contemplated by the present language of the section, if this should be administratively feasible, while retaining the mandatory requirement that the act

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in any case shall become effective at the time specified in the language of the present bill.

AVC wishes to express its appreciation to the committee, not only for the opportunity to present our recommendations with respect to H. R. 2498, but also for the expedition with which the committee is considering this vital reform.

We hope that the full committee and the Congress will likewise expedite enactment of the new Uniform Code of Military Justice. In the final analysis, the armed forces, which defend our democracy, should and must maintain democracy within their ranks.

Mr. BROOKS. Thank you very much, Mr. Clorety, for a very strong statement supporting this bill.

Are there any questions, Mr. Rivers?

Mr. RIVERS. No.

Mr. BROOKS. Mr. Elston?

Mr. ELSTON. Aside from the fact that this bill includes all the services and provides for a civilian judicial council, what difference is there between this bill and the bill H. R. 2575, which you say you were extremely critical of?

Mr. CLORETY. As you will recall, our witnesses at that time, Congressman—I did not mean to infer that your effort was not thoroughly in the right direction—came in with a list of criticisms that ran to 8 or 10 pages, which criticized the bill because it seemed to us not to be sufficiently comprehensive.

It seemed to us not to provide as many safeguards anyway as this bill.

Mr. ELSTON. What are they?

Mr. CLORETY. I recall, for example, there was no provision in that bill that there shall be a mandatory, and declared in the act, presumption of the innocence of the accused until proved guilty.

I think that was an underlying assumption, but it was not stated in the bill as I recall. It was for that reason that I referred to H. R. 2575 in the Eightieth Congress. I hope it will not be regarded as in any way critical of the effort that you made in that Congress.

I think we have now had a really outstanding effort made by the armed forces through the committee which has been at work for many months on this which has enabled them to come up with a much more comprehensive proposed act.

Mr. ELSTON. Well, you still have not answered my question. What is there, aside from the two things that I mentioned, that are in this bill that were not in the other bill?

Mr. CLORETY. This bill, it seems to us, provides additional checks in terms of the points at which the convening authority must receive the recommendations of his legal staff, of the Staff Judge Advocate.

Mr. ELSTON. The other bill provided for the same counsel for the accused that the prosecution had?

Mr. CLORETY. It did. That was one of the strong points in the other bill.

Mr. ELSTON. Well, that has not been changed. So aside from the fact that this bill provides for a civilian judicial council and affects all the services, it does not change anything in the previous bill, at least nothing that you are objecting to?

I think before you wanted cases taken into the United States court, did you not? Was it not your organization that wanted courts-martial cases tried in the United States court?

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Mr. CLORETY. We wanted an appeal to the Federal courts. We have reviewed the matter since that time, with some change in the personnel of our own committee studying it, and they have come to the conclusion that this bill goes as far as we could reasonably expect at this time.

We are concerned, as all of the veterans' organizations are, that in the endeavor to assure military justice we do not unduly impair the command function and the ability of the armed forces to function.

We believe this bill is a long stride in the right direction. It may well be that after experience under this bill we will wish to come to the Congress seeking provisions for appeal to the courts.

Mr. BROOKS. Any further questions?

Mr. ELSTON. That is all.

Mr. BROOKS. Any questions, Mr. deGraffenried?

Mr. DEGRAFFENRIED. No.

Mr. BROOKS. Mr. Anderson?

Mr. ANDERSON. No.

Mr. BROOKS. Mr. Hardy?

Mr. HARDY. No.

Mr. BROOKS. Any questions, Mr. Gavin?

Mr. GAVIN. No.

Mr. BROOKS. Thank you very kindly, sir. We appreciate your statement.

Mr. CLORETY. Thank you, sir.

Mr. BROOKS. Now we call Col. John Oliver, legislative counsel for the ROA.

We are glad to have you this morning, Colonel, as a witness.

Colonel OLIVER. Thank you very much.

STATEMENT OF COL. JOHN P. OLIVER, JAG, RESERVE, LEGISLATIVE COUNSEL OF THE RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

Colonel OLIVER. If I may introduce myself, I am Col. John P. Oliver, JAG, Reserve, legislative counsel of the Reserve Officers Association. I want to thank the members of this committee for extending to me the opportunity of appearing before them today to testify on the subject ot the proposed Military Justice Code, H. R. 2498. At any time you wish to interrupt me for a question, it will be entirely agreeable to me.

The Reserve Officers Association requested permission to appear before the Morgan committee at the time that committee was drafting the present bill. We felt that if we had the opportunity to express our views at that time, much of the time of the Armed Services Committee of the House would be saved.

Unfortunately, the Morgan committee did not see fit to accede to our request and we had no opportunity to present our views to them.

As you gentlemen of the committee no doubt know, the Reserve Officers Association of the United States is a voluntary association, composed of Reserve officers of the armed services with some 1,500 chapters located throughout the United States and overseas.

The object of the Reserve Officers Association, as stated in its constitution, is to support a military policy for the United States

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that will provide adequate national security and to assist in the development and execution thereof.

If it will not appear immodest, and in order that the committee may be advised as to my experience, may I say that I am a member of the bar of the State of California, the bar of the District of Columbia, and the bar of the Supreme Court of the United States, as well as various Federal district courts in the United States, having practiced law for the last 24 years.

And I might say in that connection that I spent some 7 years as a deputy district attorney of Los Angeles and had the unfortunate experience of having hanged a number of men. And I have spent an equal period of time at the other end of the counsel table, where I had an opportunity to, shall we say, pluck a few pans from the burner.

I entered upon active duty in March of 1941 and from that date until September 1945 served in the capacity of either a staff judge advocate or an assistant staff judge advocate for units in varying sizes from an Army post, a division, a service command, a corps, and an Army.

I might say that in that connection I worked not on the higher review level as the other gentlemen here who have testified, but rather you might say, at the grass roots level.

Throughout this period of time, I was closely associated with the administration of military justice. I have served on courts martials as president, law member, member, trial judge advocate, and defense counsel.

In other words, I have served in every capacity except as that of the accused. How I escaped that, I do not know. As a result of my service as a member of a court martial, may I read at this point a letter addressed to me while I was in the European Theatre.

HEADQUARTERS_____CORPS,
OFFICE OF THE COMMANDING GENERAL,
APO_____, U. S. ARMY,
12 May, 1945.

Subject: Inadequate sentence by court.
To: Lt. Col. John P. Oliver, headquarters_____.

1. I have read a summary of the testimony in the case of Private _____, Company ____, ____th Signal Battalion and am not pleased with the outcome. I do not consider the court to have performed its duty.

2. The decision of the court is the decision of all its members for which all must be held accountable. It would seem the court undertook to determine whether this man should have been tried by general court rather than a determination of his guilt or innocence from the evidence. Then, after finding him guilty of offenses warranting severe punishment, only a minor sentence was imposed. It is not my intention, when a case is referred to a general court martial, that any sentence imposed be one which a special court martial might have given. I desire in the future that this be kept in mind.

_____
Major General, U. S. Army, Commanding.

The Reserve Officers Association of the United States has been on record by resolution passed at its national convention in Miami in 1947 as favoring a reform in the administration of military justice and more recently at its national convention in Denver in 1948, specifically recommending favorable consideration by Congress of H. R. 2575, heretofore referred to in this committee hearing as the Elston bill.

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It is perhaps well known also to this committee that the Reserve Officers Association was extremely active in its support of this bill—H. R. 2575—both during the proceedings in the House and in its passage in the Senate, as title II, the Kem amendment to the Selective Service Act.

It is the opinion of the Reserve Officers Association that the military justice reform bill of the Eightieth Congress was a marked improvement over the system of military justice that had prevailed throughout World War II and that for the first time the primary consideration of command control had been met head-on by Congress of the United States.

We are of the opinion still that the Elston Bill is sound legislation and can see no reason why H. R. 2575—Eightieth Congress—including the provisions for a separate Judge Advocate Corps—that is plural—should not be applied equally to the Air Force and to the Navy.

There may be certain minor changes desirable in the Elston bill in its present form but in our opinion these changes are of a minor nature and easily correctable.

One of the chief differences in the proposed military justice code from the provisions of the Elston bill is the interjection of the civil civil review board. If this committee deems such civil board of review desirable, it is suggested that it might be a much better procedure to provide for three additional judges of the United States Court of Appeals for the District of Columbia to meet the work load and provide that appeals for military justice be then channeled to our civil Federal courts for consideration as appeals from the District and other courts of the United States.

Such an appeal to be permitted on both the law and the facts. It does not appear to us desirable to create an additional special civilian court operating under the thumb of the Secretary of Defense which would consider only one type of case.

We feel that the sound legal knowledge and the broad experience of our civil appellate judges will bring to the administration of military justice a breath of fresh air at the top that would be extremely desirable.

Unfortunately, experience has indicated that all too often such special boards have become political footballs and where the tenure of office is not fixed, where the advice and consent of the Senate is not required for appointment, special privilege is extended to some and denied to others. Surely all of the functions of this civilian board could be performed much more adequately by the civilian judiciary of our court of appeals.

To summarize my remarks up to this point, it is the opinion of the Reserve Officers Association, as I previously stated, that we should broaden the provisions of the present Elston bill with minor amendments and including the Judge Advocate Corps for each of the three services.

However, knowing the serious study that your committee is going to make of the present bill, H. R. 2498, may I take the liberty at this time to comment specifically on some of the provisions of that bill as it appears in the present form.

In article 1, subparagraph (5), page 3, "officer" has been defined to refer to a commissioned officer including a commissioned warrant officer, but we do find that he is referred to in article 25 (b), page 22,

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line 9. We feel that this definition should be broadened to include the title "warrant officer."

In article 1, page 4, section (13) and (14) defines "law specialist" and "legal officer" but fails to state that these officers should be qualified as lawyers. This article also fails to define the qualifications of a judge advocate. We feel that these definitions should be broadened to set forth equal qualifications for these officers as defined for law officer as contained in article 26.

Article 2, page 4—We feel that the attempt to broaden the base for jurisdiction of military courts is definitely unsound and feel that the converse should be true. The classes of persons subject to military law should be further circumscribed.

The increase of court-martial jurisdiction is the opening of the door to a military dictatorship. With all due regard and respect to the many fine officers in the Judge Advocate General's Department and there are many fine lawyers there, whom I admire and respect and like to consider my friends, I am concerned with two cases reported recently in the public press, as being an illustration of the danger of turning too many classes of people over to the military for trial.

The first has to do with a case tried in the military courts in Europe where it was reported that the name of the accused was charged with having committed, the names of the members of the court, the identity of the witnesses, the sentence imposed, and whether or not the accused had been executed. None of the public was admitted to the trial and all that was known was that there was a trial going on. Such star chamber sessions are repugnant to all our concepts of the administration of justice.

Mr. BROOKS. Now, Colonel, right there, if I may ask you, what is your idea with reference to the case of the saboteurs who were tried here in the middle of the war?

Colonel OLIVER. Mr. Brooks, I cannot comment intelligently on that because I was not here in the United States at that time and I was not able to follow that case closely enough to give you an intelligent answer. I am sorry, I cannot do that.

Mr. BROOKS. It was held then that the interest of the Nation was such that it should not be a public trial.

Colonel OLIVER. Well, there might be a difference of opinion there. I have always had the idea that this expediency to take somebody's life by a so-called judicial process is unnecessary because if your basir for depriving a man of his life is sound he is going to be dead a long time and there is no need to hurry in doing it.

Mr. ELSTON. Well, Colonel, you of course appreciate that no person could be tried in our civil courts through any star chamber proceeding. The Constitution grants a public trial.

Colonel OLIVER. Exactly, Mr. Elston. And I think the Constitution should be extended sufficiently to provide for exactly the same thing in the military courts. And if secrecy is necessary in time of war, let us delay action until such time as secrecy is no longer necessary.

Mr. ELSTON. I certainly think it is a question that deserves very serious consideration.

Colonel OLIVER. Well, I am seriously concerned about it because one of the bulwarks of American justice in my opinion is the insistence of the Constitution on open trials.

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Mr. ELSTON. No doubt about it.

Colonel OLIVER. Because the first foothold to be gained by any dictator or anybody who attempts to deprive us of our liberty is to exclude the public from the courts.

Mr. RIVERS. Of course we seem to have subscribed to the Russian doctrine in this country of killing everybody whose country we have defeated in time of war. We have killed all the generals and all the presidents and everybody else.

Colonel OLIVER. Well, Mr. Rivers, I could comment on that at some length. I am not going to take the time of the committee at this time. But the chief quarrel I have with that, frankly—and I am speaking only for myself in this regard—is the hypocracy that was connected with it.

Now as far as shooting the Germans are concerned, who committed those offenses, I have no particular love for them and I say shoot them, but let us not be hypocritical about it and claim, afterwards that we have given them a fair and impartial trial before we shot them when in truth and fact we have not.

Mr. RIVERS. If that policy had been followed after the War Between the States, then every Confederate general and everybody else who participated would have been hanged.

Colonel OLIVER. I do not say there were no injustices, but I think history, generally speaking, has looked with a high regard on the attitude of the Union Government following the War Between the States and the fact that there were so few cases on that.

But as we have seen overseas, as soon as a side is defeated the first thing you do is kill off everybody that disagreed with you.

Mr. BROOKS. However, economically we followed a different policy there.

Colonel OLIVER. I am not prepared to discuss economic policy. I am only speaking of the military aspect of it.

Mr. RIVERS. Of course I am not complaining about the SS troops, because they were a bunch of gangsters.

Colonel OLIVER. That is right.

Mr. RIVERS. But with respect to the man that has given his life to military training and that was all he knew: To follow out orders, it was a little bit hasty. And I think we subscribed to a precedent that will plague us in the future.

Colonel OLIVER. I think we made an unfortunate choice.

The next case to which I would like to refer is the so-called Malmedy massacre case. This case is not an abstraction to me as my division was fighting in that general location at the time this crime was committed.

Regardless of my personal feelings toward the perpetration of murder, I am equally outraged at the reported action of the board of review on that case as reported in the newspapers. According to this report, brutality and trickery was employed to obtain confessions upon which the convictions were had.

Recognizing this brutality and trickery, the board still approved the sentence, saying such brutality and trickery was necessary because it was a hard case to break. Such an excuse might be used by a Nazi court or by the Spanish Inquisition on the ground that the end justifies the means. However, it is not consistent with the American sense of justice.

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Particular attention is invited to the words in subparagraph (1) for training in describing officers subject to the code. This might easily include college or high school students of the ROTC in summer training camps. Obviously these young men should not be subject to the articles of this code.

Attention is also invited to subparagraph (3) Reserve personnel who are voluntarily on inactive duty training authorized by written orders. Under the provisions of this subparagraph, Reserve personnel studying a correspondence course from which they could receive points toward retirement under written orders would be subject to these articles of this code. The explanation of the Morgan committee is that this is intended to cover officers who are performing week end and flight training.

However, our experience with the administration of military justice leads us to believe that this jurisdiction under certain circumstances might well be stretched to the ultimate referred to above.

Furthermore, we do not believe it is sound in theory that civilians who engage in a 2-hour troop school one evening per month should be subject to the articles of this code, particularly when it is provided in article 3 (a), page 6 that Reserve personnel, while in a status which they are subject to this code, charged with having committed any offense against the code may be placed on active duty status for disciplinary action without their consent for such period of time as may be necessary to dispose of such proceedings.

The practical effect of this would be to subject any member of the Reserve to be unceremoniously plucked from his civilian pursuits and placed on active duty without his consent in time of peace for an indefinite period at any time within the statute of limitations.

Imagine, if you will, what well might happen to the practice of a physician or surgeon, or a busy lawyer, or an insurance agent, or an automobile mechanic, or a small storekeeper, if the power is placed in the hands of the armed services to take him from his peacetime pursuit at their will or whim. So far as Reserves on extended active duty are concerned, they should be subject to the articles the same as the other members of the armed services.

And may I say in that connection that I cannot urge this point too vigorously, because if there is one thing that is going to strike at the heart of the Reserve program on inactive status it is to put those officers and enlisted men under the military court-martial jurisdiction.

Unfortunately, I found it necessary from time to time to differ in opinion from some members of the Regular service: and, from a purely personal point of view, I can think of no more effective way to shut my mouth than to leave this provision in the bill.

Now, whether that is desirable or not, I am not prepared to argue.

Mr. RIVERS. Isn't this the same thing that Colonel Maas complained about?

Colonel OLIVER. Exactly, and on exactly the same ground.

Mr. RIVERS. Yes.

Mr. BROOKS. Well, did not Colonel Maas complain about subsection (4), rather than (3)?

Mr. RIVERS. He complained about this authority.

Colonel OLIVER. He also mentioned subsection (4), Mr. Brooks. And I think—and I am going to touch on that in just a minute—the primary point he made on the subject of Reserves is practically identical with the point I am making now.

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In other words, at any time within the statute of limitations—which, if my recollection serves me correctly, is 3 years—they could reach out and grab me or any other Reserve.

Mr. BROOKS. But do you have any suggested change that might fit that situation?

Colonel OLIVER. The simplest change I could offer, Mr. Brooks—and I offer it in all sincerity—is to strike it out.

Mr. RIVERS. This would have the consequent effect, as he observed, of killing off interest in the Reserves.

Colonel OLIVER. Exactly.

Mr. BROOKS. How would you punish a person in the Reserve on temporary or inactive duty?

Colonel OLIVER. On temporary duty, Mr. Brooks, take him in the civil courts. He is a civilian anyway, except for the fact that for 2 hours he puts on the uniform.

Mr. RIVERS. Well, if he is an aviator and gets out here and runs an airplane, there ought to be some way of discipline.

Colonel OLIVER. A civil court should be adequate for that purpose.

Mr. RIVERS. You mean in all other phases he would not be subject to the Articles of War?

Colonel OLIVER. So long as he is on an inactive-duty status, no, sir.

Mr. RIVERS. Unless it be a breach of the peace or violation of some civilian statute.

Colonel OLIVER. I mean, if the civilian statutes are not broad enough, let us suggest to the Judiciary Committee that they write in such additional provisions as may be required rather than to broaden the base of military control.

Mr. BROOKS. You would treat him, although he might be a part of an over-all, we will say, air command, as a civilian as far as punishment is concerned?

Colonel OLIVER. He is treated in every other respect, Mr. Brooks, as a civilian. He is not an officer of the United States. He is specifically excluded in the statute—that a Reserve officer is not an officer of the United States. In every other respect he is treated as a civilian, so I do not see any particular point to reaching out here in military justice and saying: Well, as to that particular one, we are going to make an exception.

If the civil laws are not broad enough, let us broaden them. But let us not increase the jurisdiction of military courts.

Mr. BROOKS. Would the military courts have sufficient jurisdiction to cover, say, AWOL under those cases?

Colonel OLIVER. An AWOL for 2 hours?

Mr. BROOKS. No. Suppose a Reserve officer should go to Mexico with an Army plane.

Colonel OLIVER. We can charge him, then, with stealing Government property. It would be very simple. I am sure that is denounced by the civil statutes.

Mr. ANDERSON. Mr. Chairman may I ask a couple of questions for clarification?

Mr. BROOKS. Mr. Anderson.

Mr. ANDERSON. At the bottom of page 5, in referring to subparagraph (1), you quote the words "For training in," describing officers subject to the code. You say: "This might easily include college or high-school students of the ROTC in summer training camps."

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Now, do you have any objection to the provisions of this bill which cover cadets at the Military Academy or midshipmen at the Naval Academy?

Colonel OLIVER. As to that, Mr. Anderson, I think your midshipman is in a very, very different situation, or the cadet at the Military Academy, because at the time he goes up there he takes an oath to the United States and he is on extended active duty for all intents and purposes.

Mr. ANDERSON. Well, how about a young man who is taking Naval ROTC under the Holloway plan, where he takes a 2 or 3 months' summer training cruise? Is he not subject to the same discipline that a midshipman at the Naval Academy is?

Colonel OLIVER. So far as Reserves on extended active duty are concerned, they should be subject to the Articles of War—the same as any other member of the armed services. In other words, by that, if a man goes to a summer training camp for 2 weeks during the time he is there on extended active duty, he should be subject to the Articles of War; yes.

Mr. ANDERSON. Then, should a young man who is taking ROTC training at a college like Stanford or California under the Holloway plan, and who intends to make the Navy his career, also be subject?

Colonel OLIVER. No, sir; because he still is a civilian.

Mr. ANDERSON. Well, I am trying to get the difference between a midshipman at the Academy and a midshipman in ROTC at one of our colleges or universities where the objective under the Holloway plan is to bring them all under the same basis. They are all entitled to the same commission if they finish their course. They take the summer training course.

Now, I have a nephew who is doing it, and that is why I am making the inquiry.

Colonel OLIVER. Mr. Anderson, I am not prepared to say that military justice should be dependent upon the amount of money you receive from the Government. But I do think the status of a man who goes to the Government academies, either at Annapolis or West Point, is very, very different from a young man who goes to a private university, even though there may be some contribution from the Federal Government.

Primarily he is educating himself.

Mr. ANDERSON. For a point of information there, Mr. Chairman: Does a young man who takes Naval ROTC under the Holloway plan take the same oath when he starts his ROTC training at Stanford University, we will say, as a midshipman who enters the Naval Academy at Annapolis?

Mr. SMART. Captain McDill says he does.

Colonel OLIVER. I think there is a difference in the contract, though.

Mr. ANDERSON. Is there, Captain McDill?

Captain MCDILL. I am Captain McDill, gentleman.

Yes; there is a difference in the contract, sir, to this extent: The specifications are about the same, except the Naval Academy midshipman is not required by law to accept a commission in the Reserves if he declines the commission in the Regular Navy or Marine Corps.

The Naval Academy midshipman does not have to make that promise. The NROTC midshipman does.

Mr. RIVERS. After how many years, though?

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Captain McDILL. Up to a certain number of years; a total of 2 years.

Mr. RIVERS. That is right, because he can quit after the first or second year and he has no obligation to the Government under the Holloway plan.

Captain McDILL. That is correct.

Mr. GAVIN. But not the Academy, though.

Captain McDILL. The midshipman can resign at any time. It is an administrative process. He is not compelled to serve more than 2 years at present. That is purely administrative.

Mr. GAVIN. In the Military Academy, he is expected to serve for 4 years.

Captain McDILL. A total of 8, sir, including their Academy time.

Mr. GAVIN. Eight years. Why do we use that differential there between the Military Academy and Naval Academy?

Captain McDILL. It has been historical and traditional in the Navy, as I understand it. We do not wish to retain people who do not desire to hold a commission, particularly aboard ship.

Mr. RIVERS. I think it was Admiral Felix Johnson who brought that bill before our Naval Affairs Committee a few years ago; was he not?

Captain McDILL. I do not recall, sir.

Mr. RIVERS. I think Admiral Johnson said then—if my colleague will yield——

Mr. ANDERSON. Certainly.

Mr. RIVERS. That he was a civilian at all other times that he was not taking his actual contract training under the NROTC.

Captain McDILL. He is actually regarded, sir, as a civilian unless he is on extended active duty.

Mr. RIVERS. That is right.

Mr. ANDERSON. That was the very difference that I was trying to develop here, because I was a little bit confused myself. Thank you very much, and thank you, Captain.

Captain McDILL. As a practical matter, any Naval Reserve midshipman who commits a serious offense is disenrolled. They are not disciplined.

Mr. RIVERS. That is right.

Mr. ANDERSON. Thank you.

Mr. ELSTON. Mr. Chairman, could I ask a question?

Mr. BROOKS. Mr. Elston.

Mr. ELSTON. Colonel, I am wondering if we could not at least improve subsection (a) of article 3 if we provided that Reserve personnel be tried in the civilian courts, provided the act which is claimed constitutes an offense is an offense against the United States outside of the military law, and let the military only try those offenses which are not so defined.

That would certainly limit it to a very few military offenses and would permit the accused to be tried in the United States court on virtually everything else.

Colonel OLIVER. The thing I am concerned with there, Mr. Elston, is not the philosophy. I think your philosophy is sound. But the practical application is something yet again.

Now, for example, being late to a formation is a military offense. And, if I may use a personal illustration, suppose when I go down to

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troop school—which meets in my particular branch of the Reserves 2 nights a month—for some reason and, we will say, to make it worse, for no good excuse, I am 15 minutes late in reporting.

Obviously, I have committed a military offense. And supposing that, as a result of that, the Regular services are empowered to arbitrarily and without any consent call me to extended active duty until such time as that case may be disposed of. And sometimes those military cases, when they go up on review, drag on for a long time. They might take me out of my civilian pursuits.

Mr. ELSTON. Well, I can see why you might invest them with authority to dispose of the case without keeping you on active duty.

Colonel OLIVER. Well, if they do not have me on active duty, they have no jurisdiction over me to try me.

Mr. ELSTON. But, to put all these cases in the United States court, you would have to go to the Judiciary Committee to get the law amended, which would be a long and tedious process.

Colonel OLIVER. Mr. Elston, for any serious offense I am confident that the civil laws are adequate. For minor offenses they can dismiss me from the Reserve administratively, which is an adequate punishment in my opinion.

Mr. RIVERS. That is the law in effect today.

Colonel OLIVER. Exactly. In other words, if it is a minor offense, all they have to do is put me before a 74–C Board, as we call it in the Army, and at the discretion of the President my commission is revoked.

Mr. ELSTON. It might not be a serious enough offense to revoke the commission. It may be something that is very trivial.

Colonel OLIVER. Yes.

Mr. BROOKS. Following that point through, too, for a Reservist in training, if he is injured he should be treated as a civilian and not as a military man.

Colonel OLIVER. I do not think it necessarily follows, Mr. Brooks. In other words, I do not think the compensation is the basis for jurisdiction of military courts.

Mr. BROOKS. Any further questions?

Colonel OLIVER. May I proceed?

Mr. BROOKS. Proceed, yes, sir.

Colonel OLIVER. We are also of the opinion that retired personnel referred to in subparagraph (4) having no active duty to perform and with but slight contact with the military should not be subject to this code.

We are further of the opinion that Reserve personnel retired, subparagraph (5) who might inadvertently, while seeking medical treatment by the Veterans' Administration, find themselves in a military hospital should also not be subject to this code.

Likewise, in subparagraph (11) we are of the opinion that civilians who are only under the supervision of the armed forces without the continental limits of the United States should not be subject to this code. Who knows to what stretches of the imagination the wording "supervision" might reach?

And, again in subparagraph (12) we do not believe that the maintenance of discipline in the military service requires that all persons within an area leased by the United States, which is under control of the Secretary of a Department and which is without the continental

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limits of the United States should be subject to the Military Justice Code. Render unto Caesar the things that are Caesar's—yes—but preserve the civilians from military courts.

In article 4 (a) we do not deem it advisable that an officer who has been summarily dismissed should be forced to waive any of his rights in order that he may obtain justice. This comment specifically refers to line 7, page 7:

He shall be held to have waived the right to plead any statute of limitations applicable to any offense with which he is charged.

Specifically, further on this same section, we think the provisions for the substitution of a form of discharge authorized for administrative issuance should have a saving clause which would permit an officer to retain such rights to retirement as he may have had prior to the arbitrary dismissal. The form of discharge also should be changed from "administrative discharge" to honorable discharge.

These comments apply equally to subparagraphs (b), (c), and (d) of article 4.

Mr. RIVERS. Let me ask you right there, Colonel: With respect to a civilian who commits a crime in say occupied Japan or occupied Germany—say he commits murder—who would have jusrisdiction of him under your line of reasoning there?

Colonel OLIVER. At the present time they are tried in what used to be referred to as the provost courts or in the civil courts of that country.

Mr. RIVERS. You have no laws in Germany now.

Colonel OLIVER. Well, they had a case—and this is based only on newspaper accounts—of some woman over there recently who killed her soldier husband. And if I read the report correctly, she was tried before the military courts as distinguished from the actual service courts.

But in order to hedge the bets of the prosecution they charged her not only under the laws of Germany but also under the laws of the military commander. And when she was convitced—and again I am only going by newspaper reports—she apparently was convicted on both, with the theory in mind that if the military commander did not have jurisdiction then he would have her under the violation of German law and if the German law did not apply they would have her under the provisions of the military governor.

Mr. RIVERS. What is your suggestion in a case of that nature?

Colonel OLIVER. Well, it is getting a little bit aside from the subject of military justice here. But I think, in view of those two cases I cited previously, as to this particular murder case that I am referring to and a case reported in the newspapers just last week end of some civilian that tangled with some officer over in Japan, this committee might well consider sometime in the future the possibility of drafting a code to apply to the military courts as distinguished from court martial.

Mr. RIVERS. Would that not be a function of the Judiciary Committee, rather than our committee?

Colonel OLIVER. I cannot answer that. I am not sure enough of the division of authority between the committees.

Mr. RIVERS. I do not wart to disturb your line of reasoning. I am just wondering. That does present a problem. Whichever committee has the jurisdiction, it might be well to look into it.

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Colonel OLIVER. I think it might well be inquired into because I do know from personal experience, which I saw very briefly before I returned from Europe and from what I heard since then, that at the beginning of the occupation there was considerable—and I do not say this unkindly—floundering around on the part of the military authorities in an attempt to develop some sound theory upon which they could base the jurisdiction of the military courts particularly over American civilians when they were first thinking about bringing in the wives and the families of Americans over there.

I was in the Civil Affairs Division of the War Department at the time and we discussed at some length as to whether or not these civilians, who were as I say the families of servicemen over there, should be subject to the German courts or whether or not the American military authority should be broadened sufficiently to cover those.

I think the view was finally adopted to broaden the military courts to cover the cases of those people.

Mr. ELSTON. You could not broaden the jurisdiction of the civilian courts to try cases outside the United States, except in Territories of the United States.

Colonel OLIVER. The Congress of the United States has a great deal of power and I am sure if they sat down to draft laws to do that——

Mr. ELSTON. Well, you may have a constitutional question involved.

Colonel OLIVER. Well, it might be worth the risk.

Mr. BROOKS. The President said the Constitution follows the flag, too.

Colonel OLIVER. Well, I think the President said that, and I think the Supreme Court has been quoted to the contrary. Frankly, I like the President's view on that subject, but I think the Supreme Court has been sound because up to now the Congress has not stated that the Constitution will follow the flag.

Mr. ELSTON. Take the case of treason. The venue is where the accused person lands in this country. And that is why in one of the recent cases they were particular that the plane land at a certain place, because they wanted to invest the court in that particular jurisdiction with authority to try that case.

Colonel OLIVER. May I suggest, Mr. Elston, that the reason that venue lay at that particular place was because Congress wrote the law to say so.

Mr. ELSTON. Well, those who wrote the Constitution also defined treason in the Constitution, and that is the only crime described in the Constitution.

Colonel OLIVER. I think the venue still was an act of Congress subsequent to the drafting of the Constitution.

Mr. BROOKS. Colonel, will you proceed with your statement, sir.

Colonel OLIVER. In article 6, subparagraph (a) the assignment for duty of all judge advocates, and so forth, is subject to the approval of the Judge Advocate General of the armed force of which they are members.

This is done apparently and properly for the purpose of removing the administration of justice from the command influence. However, there is still a fatal defect in that it does not appear that the efficiency reports or fitness reports of these judge advocates are also required to be made by the next superior judge advocate in place of the commanding officer under whom they serve.

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The experience of World War II leads us to believe that one of the most effective ways of maintaining command control is through adverse efficiency or fitness reports by the commanding officer under whom the staff judge advocate served. Many an otherwise competent staff judge advocate stultified his conscience and prostituted his profession in the interest of obtaining promotion.

If the efficiency reports and fitness reports and promotions, even temporary promotions, are placed in the hands of the Judge Advocate Corps, this temptation will be removed.

Mr. ELSTON. Colonel, right there, might not the superior officer in the Judge Advocate General's Corps not have knowledge of all of the service of the officer in question and not be able to make a complete fitness report?

Colonel OLIVER. Well, that is true, Mr. Elston. But I found from observation many times the commanding general too does not have the opportunity to make observation of a lot of the fitness reports he makes out.

Mr. ELSTON. Of course, he gets them from other officers. And the Judge Advocate General, if he passes on the fitness report, will get them from the same source, would he not?

Colonel OLIVER. I know, but you get the opinion strained through a different point of view. I mean, it is not perfect, but I think it will be an improvement.

Mr. RIVERS. Do I understand you to say that all fitness reports relating to the individuals who practice before the military courts should be O. K.'d, that is, approved or disapproved by the Judge Advocate General?

Colonel OLIVER. Yes, sir. I do not necessarily mean the Judge Advocate General, but the next higher echelon.

Mr. RIVERS. Whatever organization is created, it should be independent of command?

Colonel OLIVER. Exactly.

Mr. RIVERS. Yes, sir.

Colonel OLIVER. As to subparagraph (c) of article 6, line 8, it is suggested that the words "trial judge advocate" or "trial counsel" be inserted following the words "shall subsequently act as a" and before the words "staff judge advocate or legal officer."

In article 7, subparagraph (b), line 16, page 9, we believe that the words "grounds for" should be inserted between the words "may do so upon reasonable" and the words "belief that an offense had been committed," because a reasonable belief should be based upon reasonable grounds.

In article 9, subparagraph (c), line 23, we feel that it would be better English to transpose the word "only" from the end of that line to the end of line 24, so that the sentence would read—

an officer, a warrant officer, or a civilian subject to this code may be ordered into arrest or confinement by a commanding officer to whose authority he is subject only by an order—

and so forth.

In article 10, page 11, line 17, we believe that the word "offense" should be substituted in that line for the word "wrong" because a man might commit a wrong without having committed an offense.

In article 12, line 8, we are undecided as to the meaning of the words "immediate association" and believe that members of the armed

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forces of the United States placed in confinement should be entirely removed from having to associate with enemy prisoners or any other foreign nationals.

We think an additional provision should be added to this article requiring segregation of sexes where the parties are unmarried. And further, that all citizens of the United States, in addition to members of the armed forces, should be extended similar consideration.

Under article 15, page 13, we believe that the unlimited power of commanding officers to impose nonjudicial punishment should be circumscribed rather than broadened and we believe further that no nonjudicial punishment should be imposed without the alternative right to trial by court martial and that such alternative right should be granted by legislation rather than by the grace of the head of a department or other subordinate officer. That is in the case of company punishment.

We further believe that the withholding of privileges for two consecutive weeks is excessive. We further believe that the forfeiture of one-half of his pay per month for a period of 3 months is excessive as well as extra duties for a period of two consecutive weeks.

The viciousness of this system is further revealed on page 14, subparagraph (2) (e) (f), which permits confinement for a period not to exceed seven consecutive days, or confinement on bread and water or diminished rations for a period not to exceed five consecutive days.

I am apprehensive of the results of such unbridled power in the hands of a martinet. There is nothing in article 15 that prohibits the constant and continuous and repeated imposition of this punishment, without interruption, upon any individual.

In other words, he could repeatedly get seven consecutive days for an indefinite period at the whim of the commander, and there are commanders that would do it.

Mr. BROOKS. That is comparable to contempt, is it not, the power of contempt in the Federal court?

Colonel OLIVER. Well——

Mr. BROOKS. Where you have the right to impose repeated sentences following repeated acts?

Colonel OLIVER. That is right. But in this case here—and that is one of the quarrels that I have always had with the staff judge advocate, in trying to hold these boys down to the imposition of company punishment, because it is very, very easy for a company commander to get mad and say, "Give him 7 days"—the choice should be left up to the accused as to whether he wants a court martial or will take company punishment.

My suggestion is that members of the Judge Advocate General's Corps should be qualified as lawyers and not merely be somebody who is arbitararily designated by a commanding officer—by saying: You are a law specialist for the purpose of this case.

Mr. BROOKS. Yes, sir.

Mr. GAVIN. He must be legally trained.

Colonel OLIVER. That is exactly what I mean, sir.

We are further opposed to article 15, subparagraph (c), page 15, which permits an officer for minor offenses, to impose such punishment authorized to be imposed by commanding officers as permitted by the Secretary of the Department. This unbridled opportunity to

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impose punishment without the right to demand a trial is pregnant with possible abuses.

So far as article 17 is concerned, we believe that it is basically unsound.

The history of the squabbles between the armed services during this period in which unification has been attempted would make the abstract judicial approach of a court martial composed of officers of one service trying officers of another service extremely doubtful.

The interservice feuding is a sad commentary upon our combined operations in the past war, as evidenced by the famous Smith versus Smith, Richardson versus Smith, Nimitz versus Richardson cases of the Pacific theater.

Articles 18, page 17, again arouses our concern where it is set forth that courts may impose any punishment "not forbidden by the code." It is a primary rule in the administration of justice that a man who commits an offense should know in advance the punishment he is likely to receive and the legal attitude here of permitting any punishment not forbidden, with the forbidden punishments limited only by article 55 of the code will again permit unbridled abuse.

In article 23, page 20, it is suggested that an additional provision be added to permit a superior commander in the exercise of his discretion to reserve special court-martial jurisdiction for himself as provided in the former Articles of War.

And that is so in the case of one command, if he wants to reserve special courts-martial jurisdiction, you have a uniformity of punishment within that one command.

As to article 25, page 22, subparagraph (c), line 19 to the end of the page, we believe that this provision should be rewritten in order to clarify its meaning. The words on line 19 "prior to the convening of such court" do not indicate whether it is the intent of the law that this request should be made prior to the first time a court might convene in some other case or whether it means prior to the convening of the court of the case in which the enlisted man is the accused.

The additional language beginning in line 21—

after such a request no enlisted person shall be tried by a general or special court martial—

and so forth, does not indicate whether the word enlisted man refers to the special enlisted man then on trial or whether it refers to all enlisted personnel who might then be tried by the same court in that or some other case.

As to article 26, page 23, it is suggested that this article be amended to further provide that law members shall be designated by the Judge Advocate General rather than permit a commanding officer to choose such law members as might be amendable to his wishes.

It further should be specifically provided in this section, as it does not appear elsewhere in the code, that no courts martial shall proceed with the taking of testimony or evidence, as proved in the Elston bill, in the absence of a law officer.

As to article 26 (b), we are of the opinion that the law officer should be permitted to retire with the other members of the court for the purpose of voting on the findings and sentence.

Our views might be otherwise if the law officer were extended all of the rights, duties and responsibilities of the Federal judge but where he

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is permitted to rule only on interlocutory questions and instruct on the presumption of innocence and the doctrine of reasonable doubt, and so forth, as set forth in article 50 (c), pages 43 and 44, we feel that the services of this valuable officer will be wasted.

Article 27, subparagraph (a), page 24, line 22, and again on line 24, reading as follows:

No person who has acted for the prosecution shall act subsequently in the same case for the defense, nor shall any person who has acted for the defense act subsequently in the same case for the prosecution.

The meaning of the word "acted" is indefinite in our mind and might easily be construed that a person who had been a witness or perhaps even remotedly connected with the case might have "acted."

Again in article 27, subparagraph (b) (1), page 25, the term "judge advocate of the Army or the Air Force," or a "law specialist of the Navy of Coast Guard" is indefinite. We are concerned as to whether or not these officers shall be members of the Judge Advocate Corps of the Army or Air Force, or may they merely be officers designated as such by the commanding officer for the time being. We feel that the law should specifically designate these officers as members of the Judge Advocate Corps in each of the three services.

Mr. RIVERS. In that connection, if we have an independent Judge Advocate General's Corps, it may be possible that he would act one time as a prosecutor and at other times as defense counsel.

Colonel OLIVER. You mean in the same case?

Mr. RIVERS. No; in different cases.

Colonel OLIVER. That is right.

Mr. RIVERS. That does not contemplate a thing of that nature?

Colonel OLIVER. Certainly not.

As to article 29, subparagraph (a), page 26, we feel that this article should specifically state that the law member shall not be excused and in those cases where unable to attend by reason of physical disability or other cause that no proceedings may be had in his absence.

As to article 30, subparagraph (d), page 28, we feel that the term "any unlawful inducement" should be defined. We can find nothing in the proposed military justice code that would indicate what may or may not compose unlawful inducement. We believe that the present article of war 24 presently used by the Army and Air Force should be inserted in place of subparagraph (d).

As to article 32, subparagraph (d), page 30, we find one of the most unusual provisions contained in the entire proposed Military Justice Code. After having recited in some detail the steps that shall be taken to provide a fair and impartial investigation prior to trial, this article ends up with a statement in substance that the failure to follow the provisions thereof will not make any difference.

The explanation given by the Morgan committee in this connection is most enlightening where they say:

Subdivision (d) is added to prevent this article from being construed as jurisdictional in a habeas corpus proceeding. Failure to conduct an investigation required by this article would be grounds for reversal by a reviewing authority under the code and an intentional failure to do so would be an offense under article 98. What nonsense.

If a free and impartial investigation is necessary in the administration of military justice, why should it be jurisdictional and why the concern of the Morgan committee over whether or not a writ of

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habeas corpus would lie. This subsection would seem that we can talk out of both sides of our mouth.

As to article of war 35, on page 31, the provision that in time of peace no person shall, against his objection, be brought to trial before a general court martial within a period of 5 days should be broadened to include in time of war.

It is impossible to conceive of a circumstance where the delay of 5 days in a trial would prejudice any military operation. We have the recent case of Shapiro before the court of claims where the accused was brought to trail 1½ hours after having been served with the charges, with the court located 35 miles away from where the accused was at the time.

This article is also inconsistent with article 40, page 34, which provides in substance that a court martial may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just. In this latter article, there is no limitation as to peace or war and there should be no limitation in article 35.

As to article 36, subparagraph (a), page 32, we believe that the modes of proof should be included as a part of this code and not left to the discretion of the Secretary concerned. Modes of proof are as much a part of the administration of justice as are the articles that denounce offenses.

As to article 37, page 32, in an attempt to close the front door against unlawfully influencing the court, this bill leaves the back door open. It is our opinion that in line 14, following the words "commanding officer," the additional words "nor anyone" should be added.

This article in its present form might easily be circumvented by having the commanding officer tell his chief of staff or some other person to carry his remarks to the court and thus avoid a violation of the article. In other words, we feel that the attempts to unlawfully influence the action of the court should be prohibited to all and not merely limited to commanding officers.

Article 41 (b), page 35, limits the preemptory challenges, one to the accused and one to the trial counsel. The word accused is both singular and plural. Thus, if three accused were tried for a joint offense, they would have but one preemptory challenge between them that must be jointly exercised. Each accused should have a preemptory challenge.

Article 44, page 37. This article should be corrected to provide that jeopardy attaches when the court is sworn. Many cases are known where an accused has been on trial for his life before a court martial for the same offense merely because the review was not completed.

As to article 50, subparagraph (a), page 42, we are unable to follow the provision that permits the admissibility of records of courts of inquiry and the sworn testimony taken before court of inquiry to any case not capital and not extending to the dismissal of an officer.

We are unable to understand why such testimony might be admissible where the sentence imposed by the court might be life imprisonment or the case of the enlisted man could be a dishonorable discharge.

We cannot feel that the protection of an officer's commission should be considered greater than the protection of an enlisted man against a dishonorable discharge or any confinement in a penitentiary up to the period of life.

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Furthermore, this section would permit the introduction of evidence taken by a court of inquiry even though the court of inquiry did not pertain to the subject matter which the trial might be had by a court martial. Or, that the investigation by the court of inquiry might be of a person other than the accused.

As to article 51 (b), page 43, beginning on line 18 through 22, we do not understand the meaning of this provision. It is heretofore provided that certain rulings by the law member shall be final.

It is further provided that the law member may reverse himself. Therefore the final ruling is not a final ruling. What is meant by the words "if any member objects thereto"? We do not know and recommend that this provision be stricken.

As to article 52, subparagraph (c), page 45, the inconsistency of the provisions for tie vote is unusual. In one instance they are for the accused; in another instance they are against the accused; and in a third instance they are again for the accused.

We feel that under the doctrine of reasonable doubt and the presumption of innocence, all the votes should be in favor of the accused.

As to article 52, subparagraph (a) (2), page 44, we believe that in those cases such as the mandatory penalty of death or life imprisonment that such conviction should likewise be unanimous and in any case where the sentence is life imprisonment or confinement in excess of 10 years that the conviction likewise should require the concurrence of three-fourths of the members of the court, as does the imposition of a sentence.

As far as article of war 56, page 47, is concerned, this provision is extremely salutary. However, the experience in World War II indicates that in some jurisdictions where the commanding general was dissatisfied with the limitations of punishment imposed by the President, the practice was adopted of adding an additional charge of AWOL for possibly 15 minutes so that the sentence could be in the discretion of the commanding general.

I am not prepared to offer the draft of an amendment to this section to cover such a situation but I feel that this Armed Services Committee in its reports should perhaps suggest their disapproval of such shystering practices.

Article 59, subparagraph (a), page 49. The previous provision of article of war 37 provided that the finding and sentence, and so forth, should not be disapproved unless the error materially affects a substantial right of the accused. In this present subparagraph, this term "materially affects" the substantial rights of the accused. We feel that the use of this new term would deprive an accused of any right of appeal he might have based on errors committed by the court and feel that the former terminology of "materially affects" should be adequate to protect the Government.

As to article 63, subparagraph (b), page 51, we are concerned with the implied permission granted herein for a court on rehearing to try an accused on another and different charge than the one tried in the first instance.

We feel that if the offense was not considered on its merits in the original proceedings that separate and other proceedings should be had rather than attempt to take another bite at the accused at rehearing.

Article of war 66, subparagraph (c), page 53, as has been stated by many of the other witnesses, we do not feel it sound judicial procedure

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to permit the Judge Advocate General who is displeased with an opinion by one board of review, to refer the case back or to another board of review. Surely no board of review can act honestly and independently under such supervision and restriction.

Article of war 67, page 54. My comments on this provision have been made in the early part of my statement, but in the event this committee feels that such a Judicial Council is desirable, I fail to see in subparagraph (b) (1) where cases that "affects a general or flag officer" are of equal importance with a sentence of death of an enlisted man which would give such general or flag officer cases special priority to go to this Judicial Council.

And again in subparagraph (c), we do not feel that 30 days is sufficient time in which to perfect an appeal to the Judicial Council. The experience during the war in overseas stations would indicate that no enlisted man could possibly preserve his rights under such time limitations and it is suggested that this period be extended at least to 1 year.

In all cases, hearings should be had by the Judicial Council as a matter of right to the accused and not at the discretion of the Judicial Council, as provided in subparagraphs (c) and (d).

Mr. ELSTON. Right there, Colonel, do you not think that might really increase the work of the court? In other words, the Supreme Court of the United States today decides what cases it will admit after there has been an argument on an application to be admitted to the court: A petition for a writ of certiorari.

Now, if they all automatically go into the Judicial Council or go in in there simply because the accused requests it as a matter of right, would that not require more than three judicial officers?

In fact, would it not require a tremendous number of them to dispose of all the cases?

Colonel OLIVER. Mr. Elston, I am much more concerned with the time that some man may serve in a penitentiary or the short drop he gets on the end of the rope than I am with the work load of the Judicial Council.

Mr. ELSTON. But we want to give the accused in the trial of a military case at least the same rights that a man has in the civil courts. In the civil courts he is tried before the United States district court.

He appeals to the United States circuit court of appeals, and that court hears his case. As I recall it, that court generally passes on questions of law, rather than questions of fact.

They go to the Supreme Court of the United States and the Supreme Court decides whether they will let him appear on the question of law. Now as to the accused in the military court, the commanding officer first has the opportunity to throw out the whole case if he wants to, to remit the sentence and reduce it, and so forth.

Then he has a complete hearing on the facts, with an automatic hearing before the board of review. There may be more than one hearing before a board of review. There may even be another board of review hearing a case that the Judge Advocate General sees fit to refer.

Then, after all those proceedings, to say that he can go before the Judicial Council as a matter of right and have all the facts gone over again is giving him far more than the fellow gets in the civil court who is indicted for murder or any other offense.

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Colonel OLIVER. Well, maybe my perspective is distorted, but I do not think that heretofore the examination of those cases on review has been with the same interest for the accused that our civil courts look on in similar cases.

Mr. ELSTON. Well, that is a matter of administration, rather than the law, is it not?

Colonel OLIVER. And in your bill last year, Mr. Elston, you provided for some additional formal review, without going into the details, which has been taken out of this bill.

Mr. ELSTON. I appreciate that, and that was because we wanted to be certain that there was a complete review.

Colonel OLIVER. That is right.

Mr. ELSTON. Of every case.

Colonel OLIVER. That is right.

Mr. ELSTON. We even provided a review of all World War II cases.

Colonel OLIVER. That is right. I am going to cover that in a minute.

Mr. ELSTON. We wanted to be certain that there was a review on the facts, so that there would be no injustice done at all.

But if the Judicial Council, which is the Supreme Court so far as the military cases are concerned, have to review the facts, too, everybody will go up to that court.

Colonel OLIVER. I think it might be a good idea.

Mr. ELSTON. Well, if it was necessary yes, but I have just a question on it. I do not know whether it is or not. Certainly it has never been considered to be essential in the civil courts that the Supreme Court of the United States review the facts in the case.

Colonel OLIVER. Well, civil courts have always operated very differently than military courts. That is the reason I think it is about time we were perhaps leaning over a little backward on review.

Mr. RIVERS. Of course, the Supreme Court has gone into the legislative business now.

Mr. ELSTON. The Supreme Court of the United States.

Mr. BROOKS. Well, let us proceed, Colonel, if it is all right.

Colonel OLIVER. As to subparagraph (d), it is our opinion that the Judicial Council should inquire into all of the merits of the case and not limit itself merely to issues raised by the accused who might or might not be improperly or ineptly represented by counsel.

As to article of war 71, subparagraph (b), page 59, lines 21 through 23, we believe that a provision permitting an officer to be reduced to enlisted grade is vicious. We recognize that such a provision was contained in the Elston bill but nevertheless are of the view that such punishment, particularly in the case of an officer of mature years with a family, might be far greater than an outright dismissal from the service.

As to article of war 72, subparagraph (a), page 60, line 15, we believe that the provision for a hearing prior to the vacation of a suspension of a sentence is sound. However, it does not appear from this section how such hearing shall be held or before whom, nor the nature of the proceedings. It does not provide whether or not there shall be a record made of the proceedings or, if a record is made, what shall be done with the record.

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The delightful indifference of this section intrigues us further by the use of the term "probationer" in line 16. We can find no definition of this term in the proposed Military Justice Code nor can we find it used elsewhere therein.

Does this suggest that the armed services set up a probation system similar to that in operation in the civil courts with the supervision probation officers, records, and so forth? We recommend that this section be clarified.

As to article 73, page 61——

Mr. GAVIN. At that point, what do you think of that idea?

Colonel OLIVER. Well, I think the matter of a hearing is sound in and of itself, so you do not have the arbitrary business of saying "off with his head" to some man who has a suspended sentence.

The only quarrel I have with it is the indefiniteness with which this particular section is drawn. It is quarreling over the wording rather than the principle.

As to article 73, page 61, we are of the opinion that the limitation of a new trial based on grounds of newly discovered evidence or fraud on the court is entirely too narrow. We feel that a new trial should be granted in any instance where the interests of justice will be served thereby.

We further believe that a saving clause similar to that now contained in the article of war 53 of the Elston bill covering cases tried during World War II properly should be included in the present bill.

As to article 76, page 63, we do not believe that this Congress should make final and conclusive courts-martial proceedings even though they may have gone through the mill. We do not believe that by legislation we can or should deprive the Federal courts of the power to act in appropriate cases by writs of habeas corpus or otherwise and as has been previously suggested in our comments, we are firmly of the opinion that the court of final review should be the United States Court of Appeals for the District of Columbia. Subject of course in appropriate instances to the action of the Supreme Court of the United States.

Article 87, page 69, line 19, the term "duty to move" is too indefinite. It is our opinion that this article should be limited to overseas shipments or movements into combat.

As to article 121, page 81, as presently drafted, this article would permit an attorney who brought an action in replevin against an individual to be tried for larceny. That is under a charge of theft, I think.

Under the miscellaneous provision of this bill, article 140, section 7 (c), page 95, we have a directive to commanding officers and others in the naval service. This directive is rather unique to have been contained in a Uniform Code of Military Justice at first, in that it is directed only to officers of the naval service.

Whether the drafters of the bill felt that the officers of the Army and Air Force did not require such a directive or whether doubt as to the capacity of naval officers particularly required this directive does not appear.

While I am quite in agreement with the noble sentiments expressed, I am of the opinion that such instructions are more properly a matter of regulation than a matter of law.

As to article 140, section 7 (d) and (e), pages 95 and 96, I feel they have no place in a Uniform Code of Military Justice. I yield to no

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man in my firm belief in a divine being nor in the requirements for reverent behavior during divine services.

On the other hand, it is my opinion that the requirements for divine services and reverent behavior have no place in this code and should be a matter of regulation. Again the question is raised as to why this provision should be particularly required only by the Navy.

In section 10 of this same article, it is stated that no officer shall be dismissed from any of the armed forces except by sentence of courts martial, and so forth. This section seems to be in conflict with section 23 of she National Defense Act, as amended, where an officer may be dismissed during the period of the first 3 years of his commissioned service. I believe that section 10 should be reconciled with section 23 of the National Defense Act.

I am concerned that in the limited time that has been available to me, I may have overlooked many implications contained in other provisions of this bill. The Morgan committee worked on the drafting of this bill for over a year and my opportunity to examine it has been limited to weeks and has been done at odd times in connection with my other activities. If I have neglected or overlooked provisions of this bill that should be commented on, I ask the forbearance of this committee.

To summarize, at a meeting of the national executive committee of the Reserve Officers Association, February 20 through 22, 1949, by resolution passed by that body, the legislative representatives of the Reserve Officers Association were directed to actively question any provisions of the present or proposed legislation relative to military justice that are incompatible to the best interest of the Reserve components of the armed forces.

It is under the authority of that resolution, together with the two resolutions of our national conventions previously referred to, that I appear before your committee this morning. It is the belief of the Reserve Officers Association that the excellent provisions of the Elston bill, together with requirement for separate Judge Advocates Corps should be extended to the three services; that we strenuously should oppose any attempt to depart from the excellent reforms contained in that bill; that the independence of the administration of justice from the influence of command should be strengthened; that provision should be made for rehearings in appropriate cases of courts martial tried during World War II and that the rights of accused should be protected, consistent with requirements of a military operation.

I thank this committee for their courtesy in permitting me to appear before them this morning.

Mr. BROOKS. Colonel, we thank you for a very carefully drawn statement, which indicates a thorough knowledge of the bill.

Now, are there any questions?

Mr. ANDERSON. If he has left out anything, he wants us to accept his apologies.

Mr. BROOKS. I think he made a reservation to include it, if he left it out.

Mr. GAVIN. You say you only worked on this with very limited time——

Colonel OLIVER. Yes, sir.

Mr. GAVIN. Yet you have done a most thorough job.

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Mr. ELSTON. I think the colonel and his organization are to be commended for the very thorough manner in which they have taken this bill up section by section. They certainly have given us some suggestions which will require our very careful consideration.

Colonel OLIVER. Thank you.

Mr. RIVERS. In that connection—if my colleague will yield—if they could be incorporated in some sort of a proposed piece of work it would save us a lot of thumbing because I think——

Mr. SMART. They will be.

Mr. BROOKS. We will ask Mr. Smart, if he will, to work with the colonel and work out some arrangement.

Mr. SMART. Yes, sir.

Mr. BROOKS. So when we get ready to read this section by section we will have all these recommendations.

Mr. SMART. I may advise, Mr. Rivers, that not only Colonel Oliver's testimony but the testimony of all witnesses, their recommendations, will be digested for the use of the committee when we get to a section by section reading of the bill.

Mr. RIVERS. Which will entail a powerful lot of work.

Mr. SMART. It will be done.

Mr. BROOKS. We have one more witness this morning, Mr. Richard L. Tedrow.

Mr. Tedrow, would you have a seat, sir. You have a regular statement, have you, Mr. Tedrow?

Mr. TEDROW. No, sir; I have not. I just knew definitely that I was coming over here last Friday, sir. My remarks will be fairly general and they will be confined more or less to my views in regards to the Navy outlook, sir.

Mr. BROOKS. Well, go ahead, sir, and give us a little of your background, if you will, Mr. Tedrow.

Mr. TEDROW. Yes, sir.

STATEMENT OF RICHARD L. TEDROW, ATTORNEY, WASHINGTON, D. C.

Mr. TEDROW. My name is Richard L. Tedrow. I am an attorney in private practice here in the District of Columbia. I have been practicing law since 1934 here, with the exception of 4 years' service with the Navy during the last war.

During my service in the Navy my duties were, at least 90 percent, in legal work, mostly courts-martial work, and I had experience both here in Washington and in the field. I was a special assistant to the Judge Advocate General. I was also the assistant inspector general of naval courts-martial and legal activities.

I served on the Naval Clemency and Prison Inspection Board, as well as on the Naval Disciplinary Policy Review Board and on the special Ballantine Board set up by the Secretary of the Navy toward the end of the war.

My first and most particular concern is that in this bill it is apparently contemplated that there will be at least two different legal systems within the armed services. I gather that the Army is to have a JAG Corps.

Whether that is going to apply to the Air Force or not I cannot say at this time. But they also apparently contemplate that the Navy and the Coast Guard shall have some sort of legal-specialist system.

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Now the reason for this divergence in these different types of legal systems within the service is not known to me. It appears to me that either one or the other of the systems must be the more preferable. And whichever this committee may find, I suggest that such system should be applied uniformly to all the services.

This Navy legal-specialist system apparently grew up toward the end of this war. I might state that prior to the war and during most of the war the Navy system in regard to people learned in the law or, at least, law-school graduates, was that a regular naval officer would come here on duty and as part of his duties he would attend law school and while he was attending law school he would also be employed in the Office of the Judge Advocate General reviewing cases, and boards of review and similar matters.

As soon as he graduated from law school and whether or not he passed this bar or any other bar, he would be transferred to sea duty. On most occasions, I would state that it was maybe 8 or 9 years before such officer ever came back to Washington or was assigned to what we would call legal duties.

I believe some of the members of this committee are attorneys and I believe they know that you cannot practice law on a half- or a quarter-time basis. You cannot go to law school and graduate and then take up other duties for 6, 8, or 10 years, and then come back at the end of that time and consider yourself as being a qualified attorney.

Mr. ELSTON. Some Members of Congress have found that out.

Mr. TEDROW. Yes, sir. I was going to suggest at that point that if for some reason a member of this committee were retired from Congress here, sir, and he spent the next 2 years back in his home State entirely engrossed with some other and entirely different occupation he could not come back here at the end of 2, 4, or 6 years and be immediately up to date on all legislation that has been passed in his absence.

Mr. RIVERS. Of course, we are supposed to know everything, you know.

Mr. TEDROW. Sir?

Mr. RIVERS. We are supposed to know everything.

Mr. TEDROW. Yes, sir; I know that.

Mr. ELSTON. A violent assumption.

Mr. TEDROW. Incidentally, I think the committee will also recognize that no boy or man who graduates from law school is an experienced lawyer. However, I think even now, I know during the war and prior to the war, cases in the Office of the Judge Advocate General are passed on by people who are attending law school.

In that connection I might state I recently had a case—civil case—involving many thousands of dollars before the Navy. I had prepared a brief and it took 2 or 3 weeks. There were some very obscure points of law in the case and I went back several hundred years on questions of commandeering, expropriation of property, and the like.

And the Supreme Court's decisions are in conflict on the proposition. I was in the Navy Department on another matter. I stopped in the appropriate office and I found out who was handling the case and I said I would like to see him and discuss it with him.

And the head of the division said, "Well, I am sorry, Commander so and so is going to law school right now." That was the gentleman I was going to discuss that proposition with. So the question of quali-

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fied personnel goes not only to the rights and the privileges of these men that are tried by court martial, but I think it goes to a substantial question of property rights of the Navy Department itself.

I think if this committee will review the previous committee hearings back in about 1941 or 1942 you will find that it was because of the alleged failure of the then Judge Advocate General's Office to have qualified legal personnel available that the Office of General Counsel came into being. And all of these matters regarding contracts and almost everything else was taken away from the Judge Advocate General's Office.

Now I think it is proper to state here that I personally have no ax to grind. I certainly have no animosity against the Navy. I have a great deal of affection for the Navy. I had 4 years of excellent duty. I had fine billets.

And I had good commanding officers. And by and large certainly the officers I served with or under would compare favorably with any similar bunch in civilian life. I do not want the committee to think that I am coming up here and trying to knock anybody, because I certainly am not.

I am concerned with the question of qualified personnel first of all, because even if you give a system that we will say is not the best system in the world but if you have capable people handling that system it is going to work out better than the best system in the world if it is handled by inept personnel.

You are not going to have qualified personnel, in my opinion, until you make your legal work in the Navy a full-time work. A man cannot practice law on part time and be any credit to himself or his profession.

Mr. NORBLAD. Are they not doing that generally in the Navy nowadays?

Mr. TEDROW. They have been doing it part time for many years, sir.

Mr. NORBLAD. I mean doing it full time, generally; are they not?

Mr. TEDROW. I would not be prepared to state.

Mr. NORBLAD. I know several officers over there who do nothing but JAG work all the time.

Mr. TEDROW. As law specialists.

Mr. NORBLAD. That is right.

Mr. TEDLOW. They are also subject to assignment as administrative officers in military government, we will say, at Guam or places like that. I think that is entirely appropriate, for an attorney to be engaged in that type of additional work.

Mr. BROOKS. Your recommendations are tantamount to saying that what we need is a Navy JAG Corps?

Mr. TEDROW. Yes, sir.

Mr. GAVIN. A uniform system for all three services.

Mr. TEDROW. I think it should be uniform. If this committee decides—and I say you would decide wrongly—that the specialist system is the most desirable, then at least let us have it for all the services.

But your Navy specialist system at the present is set up in such a way that there is no requirement that those officers shall do full-time legal duty. That particular provision came up before the Ballantine Board—and incidentally I was one of the signers of the

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minority report—and the Ballantine Board after considering the pros and cons in effect recommended against having a JAG Corps and apparently preferred the specialist system.

They said that they did not see any reason why an officer who was otherwise a good officer should be lost to the line merely because he was an attorney.

Mr. ELSTON. You know, of course, the Army recommended against a separate JAG Corps, in the Army?

Mr. TEDROW. I have understood that, sir.

Mr. ELSTON. Congress provided for it, nevertheless.

Mr. TEDROW. Yes, sir.

Mr. ELSTON. The only reason they did not include the Navy was not because they did not think the Navy should be included but because the Navy bill had been presented later than the Army bill to us and had never been considered.

Mr. TEDROW. That is correct, sir. That bill was held up.

Mr. ELSTON. We understood that the Navy bill would come along later for consideration, and that was the only reason the Navy provision was not considered simultaneously with H. R. 2575.

Mr. TEDROW. Yes.

Mr. RIVERS. I believe this, as Mr. Elston said: They were next on our list. I believe you can safely assume that whatever is done for the Army and Air Force as far as an organization—I mean you can put it in your book now—it is sure going to be done for the Navy.

Mr. TEDROW. I am glad to hear that, sir.

Mr. BROOKS. Would you rather have a separate corps or would you rather unify them?

Mr. TEDROW. You mean a single corps for the three Departments?

Mr. BROOKS. Yes.

Mr. TEDROW. I question whether you could do that right now, sir. I think eventually it will be most desirable, as unification progresses. But at the immediate time and with the admitted divergence between the services, I suggest they should each have their corps, but the same type of corps for each service.

Then as unification progresses why certainly, if it is then considered desirable, I can see no objection to a single corps.

My objection is: Get your qualified personnel and assure they will remain qualified. And I can state that even if you set up a JAG Corps, unless it is going to be full-time legal duty, you are not going to have the people remain in a qualified position.

I came back from the service after 4 years and I almost had to take a refresher course in law again before I could go out and practice in the civil courts. And if you had a person doing full-time duty as a law specialist and for some reason he is assigned to 3 or 4 years at some other duty, he is not going to be in a position to pass on cases when he comes back to this law duty without extensive refreshing and preparation.

There is one point—I am jumping around here—that I do want to stress also——

Mr. NORBLAD. Before you get off that point.

Mr. TEDROW. Yes, sir.

Mr. NORBLAD. Was not Admiral Colclough, a very excellent officer in charge of the JAG, assigned after several years of JAG duty to submarines in the Pacific?

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Mr. TEDROW. Yes.

Mr. NORBLAD. And he was the JAG for several years?

Mr. TEDROW. And he was formerly JAG, for, I believe, almost 3 years.

Mr. NORBLAD. Yes.

Mr. TEDROW. He succeeded Admiral Gatch, I believe, sir.

Mr. RIVERS. That is true of the Army and everybody else, heretofore. We realize we have an opportunity now, as our chairman says, to write a code here that is going to be the catalog for the future on all military justice matters.

And I do not think that any of us are going to miss that opportunity. And I am sure our chairman senses that. And you can bet your bottom dollar we are going to make that effort. I can tell you that.

Mr. TEDROW. I am very pleased, sir. And I may say I was particularly pleased to see the armed services come out with this suggested bill. I think the bill is excellent and it intends to accomplish many things.

It is obviously the subject of compromise in many places. I can tell that after having served on these various boards myself.

I suggest that many of the offenses listed in this bill are offenses under the Federal Code. Now why they should not have been defined in accordance with the Federal definition, I do not know, sir. And why the same Federal limitation of punishment should not be placed on these offenses—robbery, larceny, forgery, and the like—I do not know either.

Mr. GAVIN. I cannot understand that, either.

Mr. TEDROW. The great majority of offenses are left to discretion.

Mr. GAVIN. I understood that in these cases it is left entirely to the discretion of the court.

Mr. TEDROW. That is correct, sir.

Mr. GAVIN. And no consideration is given to a comparable offense in civilian life?

Mr. TEDROW. No, sir. You are correct.

Mr. GAVIN. I just got into a case where ordinarily in civilian life the boy might have been given a suspended sentence and placed on probation. Here he is given a very stiff sentence.

Mr. TEDROW. That is right.

Mr. GAVIN. And I think your ideas there as to establishing some basis on which the sentences in cases may be determined is one that should receive consideration.

Mr. TEDROW. In fairness I must say this, Mr. Gavin: I think it is contemplated that the President at the request of the services will promulgate a maximum penalty in connection with all those offenses. However, I suggest——

Mr. NORBLAD. It is done by Courts-Martial Manual.

Mr. TEDROW. Before the war.

Mr. NORBLAD. Yes.

Mr. TEDROW. During the war all of those restrictions were lifted.

Mr. NORBLAD. Most of them.

Mr. TEDROW. I see no reason why that should be given to the President when we have a Federal Code that punishes these offenses and gives a limitation of punishment. If they are desirable in our Federal Code I think the same limitation should apply right here in the Articles for the Government of the Navy.

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Mr. GAVIN. So do I.

Mr. BROOKS. I am inclined to agree with you. But during the war they were having difficulty in getting cigarettes to the front and no minor punishment would stop the disappearance of those cigarettes, and the boys doing the fighting did not get any cigarettes although we were sending millions of cartons over there.

They disappeared on the way up to the front. To break that up they gave what in my mind were terrific punishments. Subsequently, on a basis of probation for future service, they gave these men a chance to work out of it.

But in time of war I can recognize those unusual situations which require perhaps a good deal of latitude. What do you think about that?

Mr. TEDROW. I think there should be a maximum, sir. I am in favor of the probation system because it had excellent results in the Navy where they set up these various retraining commands; and our clemency boards were responsible for many of these people that were sent to these retraining commands. We used to put the probationary period on them, sir.

Mr. BROOKS. A boy in my district was given 10 years for stealing three or four cartons of cigarettes that were going up to the front, which was a ridiculous punishment. But when I took it up with them, they were fair enough to give that man a chance to volunteer to go up to the fighting front and he took it and he came out with an honorable discharge and a very creditable record.

Mr. TEDROW. Well, I am in favor of anything that will give a man a chance to get a white ticket, Mr. Congressman.

Incidentally, under our Federal Code they can give a man 10 years for grand larceny right now and a Federal court can bring a man in and say: I am going to suspend sentence on you for 5 years or 8 years or whatever it is and put him on probation.

Certainly the services would have the same authority in imposing their penalties.

Mr. GAVIN. During the stress of war it is all right possibly to give some very stiff sentences ot meet conditions, but even in civilian life they are still giving some rather tough sentences.

Mr. TEDROW. That is correct, sir.

Mr. ELSTON. Of course provision was made for equalizing those sentences.

Mr. TEDROW. Yes.

Mr. ELSTON. Whereas in some cases very heavy sentences were pronounced and in other cases they were very light, when the cases were finally reviewed an effort—and I think a very honest and conscientious effort—was made to equalize the sentences and I think in the final analysis the results were good.

Mr. TEDROW. That is correct, sir. At the end of the war both services had board to go over these cases of the men in the penitentiary and tried to reduce the sentences to what they considered appropriate for the offense. We did that on the clemency board also.

I might say if your committee considers it proper to set up a judicial review by civilians, I personally favor it. The present bill provides that the counsel for such committee, both defense and prosecution, shall be appointed by the Judge Advocate General.

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I do not consider that a healthy condition, where the same officer appoints both attorneys to present the conflicting sides of the case. I suggest that if your civilian review counsel is considered proper, they should have their own counsel to advise them on the questions of law involved, so that he can advise independently of these things.

I notice also that in my opinion this bill extends far too much control over civilians to the military services. I believe and in the past Congress apparently has believed that if anything—and that is with the exception of the past war—the control over civilians by the military should be severely limited wherever possible.

Under this present bill people in civilian employment merely because they are outside of certain limits of this continental United States—I do not care whether they are a clerk or a division head or a porter—are subject to court martial by the military.

I suggest that, with the exception of civilians where there are actual wartime operations going on, such civilians should be tried by the civil courts. Now I do not care whether it is by the court of a foreign country, if there is no question of diplomatic immunity, or whether they have to send them back to this country to be tried by our Federal courts.

Mr. ELSTON. Do you think our Federal courts here can try offenses committed in Germany?

Mr. TEDROW. Under our Army of Occupation, there is substantial question. I have not gone into it.

Mr. ELSTON. Do you not think the civilians over there would rather be tried by courts martial than by some German court?

Mr. TEDROW. Well, we are allowed to set up our provisional courts over there. Why should not those provisional courts be composed of civilians rather than military?

Mr. ELSTON. Well, the Army is over there because the Army is occupying the territory.

Mr. TEDROW. Yes, sir.

Mr. ELSTON. It is a military occupation. It is not a civilian occupation.

Mr. TEDROW. But I notice it is contemplated that the control will be turned over to the State Department soon.

Mr. BROOKS. Of course a practical question does present itself in some instances where you cannot get the necessary civilian personnel. Suppose you come to an occupied area where you cannot get enough civilian workers to volunteer to come over there.

Mr. GAVIN. Could they not have those traveling teams they are talking about?

Mr. TEDROW. Well, I don't think, gentlemen, it has been in accordance with the tenets of the Constitution that the civilians should be subject to the military. And I believe our Supreme Court has construed even the authority to impose martial law and has limited it strictly. That is my personal feeling. I certainly concede that there may be bugs that might have to be worked out in the thing, but——

Mr. NORBLAD. You mean tried by the local civilian population, that is the local government of the country?

Mr. TEDROW. That would be my recommendation. I can see where at present, as an army of occupation, that would give rise to difficulties.

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Mr. NORBLAD. It would not work in New Guinea, would it?
Mr. BROOKS. Or Guam.
Mr. TEDROW. Well, Guam of course is controlled by the Navy.
Mr. BROOKS. Yes, but not——
Mr. TEDROW. Samoa, also.
Mr. BROOKS. But not triable by the local civilian population.
Mr. TEDROW. No, sir. They are tried by the Navy there.
Mr. ELSTON. What about Korea?
Mr. TEDROW. We recognize the southern part of Korea anyway, sir.

I could go through the bill section by section, but as I say, my particular concern is that I think you ought to have qualified personnel. I think you ought to have a JAG Corps for all the services.

I think you should define your punishments and limit the punishment imposed.

And I do not think you are going to have qualified personnel handling these things under a Navy specialist system, because I have seen it work.

Mr. BROOKS. Thank you very much, Mr. Tedrow.
Mr. TEDROW. Thank you, sir.
Mr. BROOKS. If there are no questions, gentlemen—we have a bill from this committee on the floor of the House this morning—we will stand adjourned until tomorrow morning at 10 o'clock.
Mr. SMART. The full committee meets tomorrow, Mr. Brooks. This hearing should continue on Wednesday morning at 10 o'clock.

(Whereupon, at 11:55 a. m., the committee adjourned until 10:00 a. m., Wednesday, March 16, 1949.)

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UNIFORM CODE OF MILITARY JUSTICE

WEDNESDAY, MARCH 16, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The committee met at 10 a. m., Hon. Overton Brooks (chairman of Subcommittee No. 1) presiding.

Mr. BROOKS. The committee will please come to order.

We have with us this morning Maj. Gen. Raymond H. Fleming, of the National Guard Bureau.

General Fleming, would you mind stepping forward and having a seat? We are glad to have you. You have a written statement, have you?

General FLEMING. Yes, sir; I have a prepared statement of Maj. Gen. Kenneth F. Cramer, Chief, National Guard Bureau.

STATEMENT OF MAJ. GEN. KENNETH F. CRAMER, CHIEF, NATIONAL GUARD BUREAU, BY MAJ. GEN. RAYMOND H. FLEMING

General FLEMING. I might preface my remarks by saying in this particular instance I represent the National Guard Bureau and also the National Guard Association, the bureau and the association having worked together in the preparation of this paper.

General Cramer asked me to say to you that he was very sorry, indeed, that he could not be here this morning, having a conflicting engagement, but did appreciate your invitation very much.

I appreciate this opportunity of appearing, at your request, and expressing the opinion of the National Guard Bureau as to H. R. 2498, a bill to provide a uniform code of military justice.

The provisions of this bill would not apply to the National Guard in its present status, but it would, in event the guard were mobilized and inducted, or ordered into Federal service. For that reason, its provisions are of interest to the guard, whose members, in event of a mobilization, would be subject to its terms.

Article 2 of the bill does attempt to extend court-martial jurisdiction to Reserve personnel, which would include the National Guard when engaged in inactive-duty training. This article should not apply to the National Guard except when in Federal service. As proposed, it would be violative of article 1, section 8, clause 16, and the fifth amendment to the Federal Constitution. National Guard personnel should not be subjected to the continuing jurisdiction of Federal courts martial after they have reverted from their active-duty status to

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their National Guard status, as proposed in article 3 of the bill. This continuing authority is also violative of constitutional authority insofar as the National Guard or militia is concerned. This conclusion has been recently sustained by the Supreme Court of the United States in the Hershberg case.

More specifically, the National Guard Bureau is not in accord with the following provisions of the bill:

(*a*) The usefulness of summary courts martial is impaired by article 20, which would grant the accused to demand a trial by special or general court martial, unless disciplinary punishment has been refused. It is believed that delays and severe punishments will result (art. 20).

(*b*) Articles 17 and 25 provide that each armed service is to have jurisdiction over the other's personnel. This will be a source of serious friction between the services and will react to the detriment of military discipline.

(*c*) The usefulness of law members of general courts martial is curtailed by not permitting them to vote or consult with members of the court. This would make their status similar to civilian judges without all the authority.

(*d*) Article 43 practically destroys the effectiveness and protection of the statute of limitations, for it tolls the statute by the mere delivery to a commanding officer of charges and specifications.

(*e*) The boards provided for appellate review in the office of the Judge Advocate General may be composed of civilians. These boards of review are to be given extremely wide discretionary powers which will enable them to overrule, with or without legal reasons, the action of courts and of all appointing authorities. The Judge Advocate General is excluded from participation in their decisions except that he may prosecute an appeal to the Judicial Council in the office of the Secretary of Defense. The Judge Advocate General has no power of appeal where findings are set aside or the sentence is reduced on other than legal grounds. The current system of appellate review in the Army by boards of review is highly efficient, insures compliance with the law and through participation in action by the Judge Advocate General, insures justice and prevents undue interference with disciplinary powers of troop commanders (art. 66).

(*f*) The punitive articles are hurriedly drawn and an attempt is made to expressly define offenses. Many incongruities result. For example, article 91 makes it an offense for a warrant officer to be disrespectful in language or deportment toward a noncommissioned officer. The offense of voluntary manslaughter is abolished and the distinctions between murder and manslaughter are left obscure (arts. 118, 119). Larceny is made to include substantially every known misuse of property with or without an intent to commit trespass (art. 121).

The National Guard Bureau considers that the proposal for a Judicial Council, consisting of civilians to review court-martial cases from the three services is a diversion from present procedures which would endanger the security of our country in time of war. The authority for the present legal system that regulates the government of the armed services is specifically provided for in the Federal Constitution and is based on hundreds of years of experience (art. 1, sec. 8, clauses 14 and 16, United States Constitution; art. V amendment, United States Constitution). It has been tested by the exi-

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gencies of wars and should not be overturned for a system which would ultimately place the administration of military justice in the hands of civilians except for relative minor offenses.

The bill states (art. 65, sec. (d), p. 56) that this civilian council is only to pass on questions of law, but the next section (3), vests the council with authority to pass on the legal sufficiency of the evidence to support the findings of the review boards. It has always been considered of paramount importance that an individual in the military service has the inherent right to have his case reviewed by military men, qualified and thoroughly cognizant of their military rights. A similar proposal was in existence during the war between the States in this country, and it was determined, at that time, the successful termination of the war required that the administration of military justice be again vested in military personnel. The present system has been continued since that time with slight changes. One of the countries who lost the past war had vested the administration of military justice in civilians, with the result that its jails were crowded with military prisoners, awaiting decisions, and the courts had a backlog of cases running into hundreds of thousands. This system was disastrous to that country in time of war, and it is believed that it would be in this country, if adopted. It is considered that this proposal, as to the composition of the Judicial Council, would jeopardize the security of our Nation in time of an emergency, and would be a hazardous interference with the duties of the proper military authorities. It would also be a deterrent to swift and sure justice in the armed services.

If it is determined that an overriding Judicial Council is necessary, then, it should be composed of military personnel of appropriate rank with a legal background. The bill should than be amended by striking out the words "civilian life," line 22, page 54, and inserting in lieu thereof the following, "qualified general or flag officers from the Army, Navy, and Air Force," and strike out the words "compensation and allowances equal to those paid to a judge of a United States court of appeals," article 67, paragraph (a), line 24, page 54, and line 1, page 55, and insert the following, "the pay and allowances of their grades."

Recommendation:That the bill be favorably considered, provided it is amended as indicated herein.

Now, Mr. Chairman, I have been asked to comment on one other thing, and that is if there should be a separate Judge Advocate General for the Army, Navy and Air Force, it is my opinion that there should be a separate Judge Advocate General Corps for the other services as exists for the Army today.

Mr. BROOKS. General, I would like to ask you if you have any objections to naming the country you point out in this paragraph?

General FLEMING. No, sir. It was Italy.

Mr. BROOKS. That proved disastrous, you say, to the administration of justice by permitting the final appellate court to pass on the facts, as well as the law?

General FLEMING. Yes, sir.

Mr. BROOKS. Your idea there is that the appellate court should not pass on the facts but should pass on the law?

General FLEMING. Mr. Chairman, I have with me Major Van Kirk, who, I believe, served in Italy.

Mr. BROOKS. Major, step forward a moment, if you will. You served overseas in Italy?

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STATEMENT OF MAJ. ROLLA C. VAN KIRK

Major VAN KIRK. I was with the Italian Army 3½ years as liaison officer, and they had a similar system where the civilians were administering the military justice. It was my observation that it was disastrous, as far as getting troops into the front lines.

Mr. BROOKS. Was that because the whole system was administered by civilians or just because the appellate set-up was permitted to pass on the things?

Major VAN KIRK. The whole system was administered by civilians.

Mr. RIVERS. The Italians had no basic constitutional rights like the Americans.

Major VAN KIRK. That is right.

Mr. BROOKS. Any questions, Mr. Hardy?

Mr. HARDY. You are opposed to any civilian review of decisions of military courts?

Major VAN KIRK. It is provided for in this bill that civilians may be appointed to those boards.

Mr. HARDY. I understood you were opposed to that provision.

Major VAN KIRK. It was recommended that they stay in there and then they would be appointed by the Judge Advocate General of the Army, the civilians.

As I see this over-all court, in time of war they could set up the courts in every theater, and it would involve civilians going into every theater and passing on each one of those cases, which, in some instances, involves more than a year's time.

Mr. HARDY. If I understood paragraph (e), I take that to mean that you would oppose the civilian board of review?

Major VAN KIRK. Not as presently constituted in the Army side, that they could appoint civilians in there, but they would be appointed by the Judge Advocate General of the Army or the Air Force or the Navy.

Mr. HARDY. You mean under the Elston bill as it now works?

Major VAN KIRK. Yes, sir.

Mr. BROOKS. Any further questions?

Mr. DEGRAFFENRIED. You say the usefulness of law members to a general court martial is curtailed by not permitting them to vote or consult with members of the court. The law member that the bill has reference to would not actually be a member of the court martial, would he? The member of the court would be there just to advise him just what the law is. Isn't that the status he is contemplated as having?

General FLEMING. Our reaction was that he did have the vote and was participating.

Mr. DEGRAFFENRIED. Say, for example, you had a court martial on which there was nobody except Army men, none of whom were lawyers; that there should be a law member there, not as a member of the court, not as a part of the court, but simply a law member to advise him as to propositions of law that would come up during a court-martial trial.

General FLEMING. Yes, sir; but I still think it would be more effective if he had full membership on the court and could vote.

Major VAN KIRK. This way he cannot vote. He is off by himself and sits more in the capacity of a judge.

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Mr. DEGRAFFENRIED. Don't you think where you have a court-martial hearing, if you just have some lawyer there, who is not taking an active part in the trial, either in the prosecution, he is not prosecuting the case, he is not defending the case, he is not a member of the court, he is merely there to advise them on the propositions of law that might arise during the trial, in a disinterested way, not as a member of the court, not in representing the defendant, not in representing the prosecution, just simply there—for example, suppose some proposition came up and the attorney for the defendant made an objection and there was no lawyer present.

I have been in court-martial hearings where the court martial had to adjourn, where the court had to quit, until they could go and find a lawyer to consult with on a proposition of law that was raised by defendant's counsel. Before they could sustain the objection or overrule the objection, they just simply had to adjourn the court and go find them a lawyer or go get advice as to whether this objection should be sustained or whether it should be overruled before proceeding any further.

Don't you think it is a good idea in all court-martial cases to have a disinterested lawyer present, legal member, who is not a member of the court, not a member of the prosecution or not a member of the defense?

General FLEMING. I certainly think it would be extremely valuable to the court. I think he could render that same service and better service by being a member of the court.

Mr. RIVERS. He could represent the Judge Advocate General's office and his opinion could be subject to appeal and you would have the record beginning from the date of the trial, and it might be a little more expansive, but it would be worth it if it would guarantee any more proper procedure. I think my colleague might have something.

Major VAN KIRK. The legal officer that is sitting there or the Judge Advocate officer that is sitting there should be disinterested in seeing that justice is done. But it was just our notion that he should still have the right to vote and to take part in the deliberations within the jury room. Otherwise he is going to be off by himself and not able to advise with the other members of the court at all times.

General FLEMING. Conserve manpower.

Mr. RIVERS. If you have a traveling court, like they had in a lot of theaters in one phase of the work—they traveled around with the court martial—it could not hurt.

Mr. DEGRAFFENRIED. There is one other question I want to ask the general just as a matter of information myself. In looking through these bills I saw some clause in there that provided that the defendant, prisoner, or accused might be placed on bread and water diet for 5 days, not longer than 5 days. Based on your experience, I want to ask you whether you think that any soldier, regardless of the degree of punishment he is entitled to, or what should be done with him in the way of punishment, whether a soldier's health should be jeopardized, whether they should make it legal for him to be placed on a diet of bread and water for a period of 5 days or any other period of time.

General FLEMING. You mean as to whether it would hurt his health?

Mr. DEGRAFFENRIED. I mean as to whether that is a type of punishment that a country like ours, the United States of America, ought to inflict on the members of its armed forces.

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General FLEMING. Of course, personally, you hate to do a thing like that. I think, perhaps if a man is in good health, it would not jeopardize his health and it might be one of the ways to bring him around. It is different in dealing with individuals of various types. One type of punishment will succeed where another one will not. I think it could be done to a man in good health without injuring him at all, and it might be the thing that would correct him and put him right. But I think it should be carefully handled and perhaps a medical officer should check the man and see if it would seriously injure him. In case it should, under no condition would I recommend it. That is my personal opinion.

Mr. BROOKS. Mr. Elston, do you have any questions?

Mr. ELSTON. No questions.

Mr. BROOKS. Thank you very much, gentlemen. We appreciate you coming here before the committee.

We now have Col. William A. Roberts, representing the AMVETS.

STATEMENT OF COL. WILLIAM A. ROBERTS, UNITED STATES AIR FORCE RESERVE, REPRESENTING THE AMVETS

Colonel ROBERTS. My name is William A. Roberts. I appear on behalf of AMVETS in support of H. R. 2498. On numerous prior occasions AMVETS has presented its policy supporting principles and methods of administration of military justice which conform to those embraced in the present bill. Particular attention is directed toward our testimony before this committee on April 24, 1947, at page 2140 of House Document 125, the report of subcommittee hearings on H. R. 2575 in that Congress.

We are of the opinion that the present bill is markedly superior to earlier proposals in its provision of a uniform code for all departments of the armed services and in the simplicity and precision of its language.

We particularly approved the steps which have been taken toward the maintenance of a separate appellate procedure and toward the assurance of the assignment of officers skilled in the law, particularly in the appellate process.

Perhaps the most important provisions of the proposed legislation are those intended to establish confidence in the fairness and impartiality of the trial courts through separation of the command and prosecuting channels from the judicial administrative machinery. In our opinion, such interference can be exercised in many ways with more subtility than by direct action. Dilatory conduct by a reviewing authority has the effect of imposing punishment and the failure to make adequate effort to provide the personnel and physical equipment necessary for investigation and preparation can be equally obnoxious.

We would like at a later date to submit a matter of detailed suggestions as to the administration of this act, but believe that it is of paramount importance that this legislation be enacted promptly even though experience may require its subsequent modification. It is a careful, workmanlike job of drafting in which it is apparent that many concessions have been made from the traditional theory of military discipline without impairment of good government of the armed services.

That is our formal statement.

Mr. BROOKS. Thank you very much.

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You believe that this measure is so far an improvement over what we have you are willing to go along with it?

Colonel ROBERTS. Very much so.

I would like to take a minute and make a few remarks on the questions that arose just a few minutes ago.

One is with respect to the suggestion that the law member should participate in and vote with the court. I very decidedly disapprove of any suggestion. That would be reverting to the same thing you had before, reverting to command channels, particularly in instances of little consequence, but it is the accumulation of those little instances that caused this bill to be drafted. It has caused the AMVETS, since the war, to urge the revision of the whole theory.

In the first place, I believe the law officers should be so qualified they would be interchangeable between the services. I agree with the separate to flight and separate JAG, of course. But, the officers ought to be qualified to move between the departments.

Mr. RIVERS. This bill would do that.

Colonel ROBERTS. I would permit it to happen. Under those circumstances it would be most important that he not be a member of the court and not vote. We have had experience of the law officers being selected by the command channel and being called out of the courtroom and given instructions about rules of evidence and other matters. There is no doubt that law officer, with the dignity afforded by this bill, will be a strong individual.

Just one more comment. That is with respect to the bill as a whole. The suggestion that traditional military justice is applicable to modern warfare discounts entirely the fact that in any modern warfare, the war we have in our lives, the vast number of personnel are practically operating as civilians. They are not Infantry in the field under the direct command of an individual commander. They are very seldom in contact with the enemy. The greater portion of the personnel-by number, consist of civilians performing civilian functions in warehouses, chemical laboratories, radar stations, and other points of that kind.

I think that it is very important that this approach to military justice be taken right at this time when there will be an opportunity to develop procedures and develop machinery and equipment to have improved military justice consistent with modern warfare conditions.

Mr. RIVERS. In other words, the time to enact this type of legislation is when everybody is not embroiled in strife?

Colonel ROBERTS. Let's pass it first, and if there are some flaws in it, they will be found later.

Mr. ELSTON. You speak in your statement about this bill being markedly superior to earlier proposals. What earlier proposals are you talking about?

Colonel ROBERTS. I referred to a particular bill which, in itself, was a pretty good bill, which was not identical with this but very similar. There were other proposals which were improvements, which were palliative, in my opinion, which attempted to correct the minor procedural matters, which did not approach the appellate action.

Mr. ELSTON. That was established last year and the bill passed in the House.

Colonel ROBERTS. That is true. There was progress. The bill is not law yet and I hope it will be shortly.

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Mr. ELSTON. It is the law.

Colonel ROBERTS. I mean this bill is not the law.

Mr. ELSTON. The bill that passed last year is law as far as the Army is concerned.

Colonel ROBERTS. That is correct.

Mr. BROOKS. Thank you very much.

Col. Frederick Bernams Wiener.

STATEMENT OF COL. FREDERICK BERNAMS WIENER, WASHINGTON, D. C.

Colonel WIENER. My name is Frederick Bernams Wiener. I am a practicing lawyer in Washington, D. C. I am a colonel in the Judge Advocate General's Corps Reserve, in the Army. I am commanding officer of the Two thousand nine hundred and thirteenth JAG service training group.

Mr. BROOKS. You were also in the Department of Justice?

Colonel WIENER. I was formerly in the Solicitor General's office in the Department of Justice.

Perhaps I had better state my military qualifications. I was commissioned in the Reserve in 1936, called to extended active duty in March 1941. I was staff judge advocate of the Trinidad sector and base command which comprised a good deal of the United States bases in the West Indies, from April of 1941 to September of 1942. Then I was with the Judge Advocate General's office in Washington and with the Operations Division of the War Department General Staff. Then I went overseas again and was judge advocate general of the First Island Command, which was in New Caledonia; then the forward area, which was Guadalcanal; and then of the Thirteenth Air Force. Then, gentlemen, I was ordered to the United State military mission in Moscow but Joe did not give me a visa, so I never got past Miami Beach. I do not know whether he decided I was not a Commie or whether he was jealous of my whiskers, but, at any rate, I did not get a visa.

Then I was back in Washington in the Judge Advocate General's office, and then went overseas in December of 1944, joined the Tenth Army, made the Okinawa invasion, and was with them in the Military Government Section; and the I got out of the service in December of 1945.

Last year I had a 30-day tour of duty with the General Staff on military justice problems.

I have studied the subject of military law. I have been engaged in litigation in a great many military law cases in the Supreme Court and in the circuit courts and in the district courts of the United States.

Now, I do not have a prepared statement, Mr. Chairman, but I have very carefully prepared notes. Instead of reading something, I will discuss it with you and I hope you gentlemen will interrupt at any time if anything comes up.

What I would like to do first, with your permission, is to concentrate on the fundamentals. Why is this bill being discussed here in the Armed Services Committee instead of the Judiciary Committee? Well, the fundamental there is, and it is often lost sight of, particularly by bar associations, that the Army, or for that matter any armed forces, differs from civilian society. The object of the civilian society is to

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make people live together in peace and in reasonable happiness. The object of the armed forces is to win wars, not just fight them, win them, because they do not pay off on place in a war. That being so, the institutions of armies, even in a democratic society like ours, military institutions, necessarily differ from civilian institutions.

Now, our Declaration of Independence proclaims that all men are created equal and one man one vote. We are astounded when we read that in England people have two votes, one for their universal constituency and one for their residency.

You cannot have equality in an Army. The general has got to be more important than the individual. The only kind of real democracy you can have in an Army, and that is the democracy we attained ourselves in the last war, is equality of opportunity. That is real democracy. Everybody starts at the bottom and has an equal chance to work up. When he gets to the top he cannot be considered equal, for military purposes, with the man at the bottom.

Now, our whole civil government is based on the system of checks and balances, but you cannot fight a war or run an army that way. You have got to have a supreme commander. The Russians tried to fight the Finnish war with divided control. You had the unit commander and you had the political commissar. It was after the Finnish war that the Soviets had to get rid of that divided control if they wanted to win.

Our whole notion of government is based on the idea that we will discuss proposals before we enact them. There are discussions in the committee; there will be discussions on the floor; and there will be wide debate. In a war you have got to have a decision.

I came across a lovely expression from Winston Churchill's book about those—

> broad happy uplands where everything is settled for the greatest good by the greatest number by the common sense of most after consultation of all.

That is the way we proceed in our civilian society, but we cannot proceed in an army that way. Look at the generals in American history who have called councils of war. Look at General Meade at Gettysburg calling a council of war because he could not make up his mind.

We elect representatives; we elect our officials. We do not elect our military leaders. We used to elect them. Look at the old militia elections and look at the way the militia used to run.

Military offenses are acts that would be rights in the civilian society. Take the business of telling off the boss, that is an inalienable right of an American citizen. If you tell off the sergeant or a commissioned officer, that is a military offense. In civilian life, if you do not like your job, you quit it. If you do not like your job in the Army and quit, that is called desertion in wartime and it carries very serious consequences. In civilian life, if people decide they do not like working conditions and walk off jointly, that is a strike. In the Army or in the Navy, that kind of an action is mutiny, which is one of the most serious offenses.

We have the guaranty of jury trial in our Federal and most of our State constitutions. We do not have it for the armed services by reason of the exception and the fifth amendment. That was considered so fundamental and so obvious by the founders that when the

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fifth amendment passed through Congress there was not a single word of discussion on that feature of it, because the members of the First Congress were veterans of the Revolutionary War and they knew you could not run an army the way you run a civilian society. So, I say that we are up against the stubborn hard fact that the purpose of an armed force is to send men obediently to their death, and that is very carefully designed just for that purpose. That may be a very unpleasant fact, but I think it is fundamental.

Mr. BROOKS. I think we lose sight, too, Colonel, of the fact that sometimes in time of war the order of the commanding officer can be far more serious to the future of an individual, when on the battle front, than a court martial might be. The commanding officer has authority to issue orders which certainly affect the entire future of the individual who takes the orders and carries them out, and sometimes much more so than the court martial would.

Colonel WIENER. That is correct. In that connection, the thing that has always struck me is that in the last three wars in which this country has been engaged, only one man has been shot for desertion in the face of the enemy—one man. Yet think of all the men who died because they did not desert, because they obeyed orders. The objects of military law are different.

With your permission, I would like to read a short passage that General Sherman wrote some 70 years ago. I think even the gentlemen from South Carolina agree that while the General may have been a little bit careless with fire, he was a great military man. As a matter of fact, he was a practicing lawyer before he became a general.

Mr. RIVERS. He did a thorough job on anything he undertook.

Mr. WIENER. This is what the General said in 1879:

> I agree that it will be a grave error if by negligence we permit the military law to become emasculated by allowing lawyers to inject into it the principles derived from their practice in the civil courts, which belong to a totally different system of jurisprudence.
>
> The object of the civil law is to secure to every human being in a community all the liberty, security, and happiness possible, consistent with the safety of all. The object of military law is to govern armies composed of strong men, so as to be capable of exercising the largest measure of force at the will of the nation.
>
> These objects are as wide apart as the poles, and each requires its own separate system of laws, statute and common. An army is a collection of armed men obliged to obey one man. Every enactment, every change of rules which impairs the principle weakens the army, impairs its value, and defeats the very object of its existence. All the traditions of civil lawyers are antagonistic to this vital principle, and military men must meet them on the threshold of discussion, else armies will become demoralized by even grafting on our code their deductions from civil practice.

It is sometimes asked what is the object of military law. It is generally put as a personal question. Do you consider that the object of military law is to maintain discipline or to maintain justice? My answer always is that those are not opposites. You cannot maintain discipline by administering justice. The standards of guilt and innocence in military law are not different from civil law. Possibly there is a little more relaxation on what is harmless error than in the civil courts. But the real difference is the object and the amount of punishment. The object of the civilian criminal court generally is to reform and rehabilitate the offenders. The object of the military law is not vindictiveness. It is to act as a deterrent so that when the first man steps out of line and gets a hard sentence it will deter others.

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Mr. RIVERS. In that connection there is no use for us to confuse the basic objective of keeping morale with the ultimate disposition of justice.

Colonel WIENER. Precisely.

Mr. RIVERS. And they need not be opposites.

Colonel WIENER. But the military justice has to be swift and its punishment will frequently be more severe. There is always an irreducible number in any group, particularly in a large number raised by selective service, who can only be ruled by fear and compulsion. If you have a system of military justice which minimizes a possibility that a guilty man can "beat the rap," then you have an effective system of military justice. The more loopholes you inject the more the man feels, "Oh, well, I can get a lawyer; I can appeal it on up; I can get off." To that extent you impair the object of military law. I am not suggesting that anybody be sent to the guardhouse on general principles or anything like that. You do have the irreducible minimum that can only be ruled by fear. You do have the necessity for swift and sure punishment, and you do have to have a feeling in the sense of the individual, "Well, maybe I had better not, because dire punishment will follow."

Mr. RIVERS. Isn't that also true in this theory of fraternalization which Doolittle recommended?

Colonel WIENER. I do not think you can run an army on the basis of a great big happy family. We certainly do not run industries like that. The janitor who sweeps up the mill does not sit down at lunch with the board of directors or stand in the same chow line with them. If it be objected that these notions that I have been outlining are regimentation, then I would ask how you can mount an invasion without regimentation. That is the whole notion of an army: that you direct the armed force of the republic against the enemy.

Well, I have emphasized those because they seem to me fundamental, because they are in line with what Chief Justice Holmes, who was a soldier and judge, said: "We need education in the obvious more than segregation of the obscure."

I would like to make one more observation before I go on to the provisions of the bill. There is a lot of silly, loose talk about the system of military justice being un-American. If it is correct to labe as un-American anything a particular speaker doesn't like, then for some of these gentlemen the present system may be un-American. If it be not un-American to be consistent in line with our traditions, then the system is not un-American because it antedates the Constitution. The basic system of military justice was proposed by John Adams and Thomas Jefferson to the Continental Congress in 1776, and they took it, word for word, from the British Articles. They said: "After all, the British have conquered an empire and that is a pretty good system of military law."

The fifth amendment excepts citizens in uniform from the guaranties which it gives the citizen out of uniform.

Mr. BROOKS. What system was used in the Continental Army by George Washington?

Colonel WIENER. The American Articles of 1776 provided for command appointment of courts. The system was not very unlike the system we had in the last war. It was taken, word for word, from the British system. Of course, the punishments were very severe in line with social notions of that day.

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I think for anyone to suggest that the system which we have had in our forces since that time is un-American simply displays the ignorance of the speaker.

Now, with that by way of introduction, I think it is much easier to discuss the specific provisions of the bill. I should say, perhaps, by way of introduction, that while there are good provisions in it, in my judgment it is a distinct retrogression from the Elston bill. I do not agree with all the Elston bill has in it. I think there are one or two points, maybe more, that could be improved by subsequent amendments. By and large, the Elston bill was an improvement over the 1920 Articles. The present bill would be a step backward.

Mr. RIVERS. Mr. Elston's bill removed it from the command.

Colonel WIENER. It did not remove it from the command. What the Elston bill did was to prevent the military commander from influencing the court. It did not take away command appointment. That is what the people are screaming about now.

Mr. GAVIN. Who is screaming about it?

Colonel WIENER. The bar associations.

The command appointment of courts was in the Elston bill and is still in this bill, in articles 22, 23, and 24. I think that is thoroughly sound, basically, because of these differences in an armed force and civilian society. The opposition to command appointment of courts not only disregards that fundamental difference but it also disregards a lot of law. There have been decisions on this. There have been decisions that you cannot take the power of the appointment of courts away from the commander. There is the *Swain* case in 165 United States 355. Swain was a Judge Advocate General of the Army who got in some difficulties and he was tried by a court appointed by the President, and he was convicted and then sued in the Court of Claims for his back pay. One of his points was that the courts were illegally constituted. He said that there was no statute authorizing the President to appoint a general court martial. The Court of Claims and the Supreme Court said, "True, there is no statute, but the President is the Commander in Chief, and if, by mere omission, Congress could take away from him that power of appointing courts which is necessary for the maintenance of discipline, Congress would have within its power to take away the very essential prerogatives as Commander in Chief."

Of course, at the present time that present thing does not arise, because ever since 1916 the Articles of War recognize the President's power to appoint.

Mr. RIVERS. You contend we would be over and above our power?

Colonel WIENER. You certainly could not say that the President could not appoint a court martial as a result of the Swain case.

Mr. RIVERS. I certainly believe it could be reasoned that if we had independent JAG officer—certainly the JAG comes under the Commander in Chief—while it would be an independent commander, he still would be under the President. So, removing it from command and putting it under some other segment directly under the President certainly would not weaken the whole theory of military justice.

Colonel WIENER. No; but would it help?

There is a suggestion on the panel system that has now been watered down. The suggestion is that the Judge Advocate General select the court from the panel. Who selects the panel? The commanding

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general. Why shouldn't he select the court? In practice the court is not selected by the commanding general. In practice, and I speak from experience in four jurisdictions, the court is picked by the staff of the Judge Advocate General. He finds out who is available, and he knows the officers at headquarters who have experience and who have the proper judicial temperament, which the Fourth Article of War requires, and he tries to get the ablest and most experienced people possible. You cannot always do it because there are other demands on their time. Basically, it is the staff of the Judge Advocate who appoints the judge.

As a matter of fact, the only time I ever went to the commanding general to get something about the court was not because the commanding general thundered and said, "I want So-and-So on the court." It was because I could not get the Chief of Staff to release So-and-So, because he said, "Oh, he is too busy and he is not available.'

One of the finest provisions of the Elston bill was the requirement of having the lawyer as a law member. I cannot tell you how many times I would sort of hold my breath that this lay member, doing the best he could, would commit reversible error.

Mr. BROOKS. 2498 has the same provision.

Colonel WIENER. Yes.

Mr. RIVERS. Then the provision to train these men is another good thing?

Colonel WIENER. They are trained in peacetime now. The practical difficulty with administering justice in the armed forces in wartime is this: The experienced people who really knew the book—there is an Air Force Army man who is now a general, who served with me in Trinidad. He had been an instructor in law at the Military Academy. He is one person I would not bet with as to what was in the military manual, because he knew it as well as I and sometimes better. You put him in command of an air force and he just is not available. The young captains who used to be defense counsel, they are battalion and regiment commanders, and they are not available. So, you have a delusion of your experience, and you hope that the folks who get to the top know something about it.

I was very fortunate. I worked with men who were older and more experienced officers. They never told a court to convict. They knew better. But, when you take someone who has gone from major to major general in 9 months, and he did not get much experience, and you provide him with a civilian judge advocate whose judgment, perhaps, even on legal matters, is not too sound, you do not get a very good result. The whole difficulty in the services in wartime is spreading that experience and still training them for combat. They have got to learn an awful lot. If you train a man to be an infantry officer, and you want to put him through an OCS course in 6 weeks, you cannot take an awful lot of those 6 weeks to teach him military law. Maybe it is a good argument for military training.

Mr. GAVIN. What chance has the accused man under those circumstances?

Colonel WIENER. I think it is very significant that the Vanderbilt committee, which certainly had on their membership a minimum of military experience, reported that it had been unable to find an authenticated case that an innocent man had been convicted.

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Mr. DEGRAFFENRIED. Is it your judgment that under this proposed bill the accused is given too many rights, privileges, and safeguards; that is, he is given so many, in your judgment, it would interfere with the discipline of the Army?

Colonel WIENER. I think that the elaborate system of review, which I will cover more fully later on, with your permission, in this bill is defeated. As a matter of fact, under the 1920 articles the delays in getting a guilty person convicted and off to the jailhouse, or getting an innocent person free, were much too great. At Fort Myer in April of 1943 I was trial judge that sent an Ordnance officer to prison for 2 years. There was no question of his guilt. That man was a prisoner from April to September, when the board of review got around to reviewing his case. That is far too long. That is self-defeating.

Where is the deterrent effect? A man runs away in battle. If it takes 2 years from the time he runs away until the sentence is finally confirmed, and the war is over at the end of 2 years, that is pretty close to cold murder shooting him then. Of course, if he has killed his buddy, then that is different. But even so, the delays here in the District of Columbia death house, the delay from the time the murderer is tried until he finally pays his debt is far too long.

The thing I am fearful of is that this will not give any more real security to an accused. It won't really help the innocent man. But it will be of great benefit to the man who is guilty who may have committed some border-line case that engaged the attention of lawyers.

Mr. DEGRAFFENRIED. Even the way the courts martial have been run in the Army, hasn't there also been considerable delay between the time the prisoner was convicted and before his appeal was reviewed?

Colonel WIENER. Yes; and I think too much delay.

The difficulty with the Army system, as I observed it functioning, there was sometimes too much speed between the offense and the trial, because the Judge Advocate General's Office was under the commanding general of the Army Service Forces, and to an engineer a lawsuit is like a bridge—a bridge can be built in so many days, therefore the case can be tried in so many days, regardless of what sort of investigation or effective work it takes. Service command generals were marked on the time it took to try people. Consequently, the case would be rushed to trial before it was fully investigated in order that the average might not go down. Once he was tried, from the time the record left the commanding general until it was finally acted upon by the President, there were very grave delays there.

Mr. BROOKS. You think more effort should be placed in having a complete and fair trial and less time spent on appeal?

Colonel WIENER. Yes. In that connection, I think that the provision to remove the law officer from the deliberations would be very, very detrimental. Now, when you remove him for deliberations, and I have in mind that he is disinterested, and that he is a lawyer and that is a reform for which we are indebted to the Elston bill—by taking him out you take out of the deliberations the one man who can make the most helpful contribution to the deliberations. That, I know, is obvious to any lawyer or any other officer who has sat on any court martial and had the assistance of a trained law member.

I cannot help but think that the provision removing the law member from the deliberations was not the product of anyone who ever sat on

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a court, when you consider, gentlemen, that all the grief and all the difficulties and all the confusion, and all the mix-ups to which Mr. Elston and his committee listened 2 years ago resulted from ignorance rather than wickedness. It was mostly ignorance.

That gap was plugged by insuring that the law member had to be a lawyer. Now you remove him just when he is able to do the most good. It is the analogy, gentlemen, of the jury trial, but the law officer does not have the judge's power. It is wholly a false analogy. It is a jury trial without the safeguards. It is an importation from the English practice and it is always dangerous, gentlemen, to transplant instructions. In England the members of the court are officers, military officers. The judge advocate is a barrister, a civilian, not a military man. The judge advocate sits there in his barrister's gown and wig. He instructs the court. Here we have never had that sort of thing. He is a civilian. He does not sit down with officers.

Here you are proposing to make that law officer a member of the military forces. He is not a civilian. Why shouldn't he sit down with the court and give them the additional assistance which his legal knowledge enables him to give? I think this notion of taking the law member out of the court just at the time when they are about to perform their most important function is the most retrograding step in this bill.

Mr. RIVERS. You do not deny that commanding officers have deliberately injected themselves into the result of trials throughout the many, many theaters and openly demonstrated their dislike for the decision rendered in many, many cases?

Colonel WIENER. As to that, Mr. Rivers, I have heard a great deal of testimony to that effect from people whose probity and credibility I have great confidence in, and I believe them. I can only say that it never happened in any of the places that I served, because I was fortunate in serving commanding generals who knew better. They were all great men. However, one of them arranged my law books according to size, all tall books to the left of the shelf and the short books to the right. He knew enough not to tell the court not to convict. The only skin letters that went out I recommended. That now is prohibited and it is not necessary to discuss it.

Mr. RIVERS. You mean under the Elston bill?

Colonel WIENER. It is prohibited in the Elston bill.

If you are going to have a lawyer on the court to assist in the court-martial, do not take him away just when his assistance becomes of essence.

Mr. RIVERS. If he has no fear of any reprisals——

Colonel WIENER. I think that is largely exaggerated. I have seen letters in bar association journals of some timid judge advocate who would not tell the commanding general that he was doing something illegal because he was afraid of not getting a promotion. If any judge advocate is so gutless that he will not stand up and say, "General, this is not in accord with your law," then he has no business being a judge advocate.

Mr. RIVERS. If you start off with that independence at the very beginning, you start off by giving him a hypodermic of guts.

Colonel WIENER. If you have to give him a hypodermic, you had better not use him.

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Most generals who are worth anything do not act that way. I know a general who told me that he sent a judge advocate, whom we both knew, out to the Siberian Desert because every time the judge advocate asked for an opinion he would say, "General, how do you want it? I can write it up any way."

I think this notion of the honest lawyer trembling in fear of the brass is exaggerated. They disagree with me. In some cases I think I was right and in others I became very convinced shortly thereafter that I was wrong. Even with the most difficult man I had to work with I never had any difficulty in saying, "General, this is my considered opinion and it is my recommendation that you do such and such."

I would say further, "However, it is your responsibility and if you want to do it the other way, I will draft the necessary orders."

That is the only way you deal with a commanding officer. The notion of the independent judge advocate who has to be given this independence so that he may function is a little bit like the political commissar, who is the independent fellow there, to be sure that word is kept inviolate from the whims of the commanding officer. Suppose the law officer, under the proposed bill, gives an erroneous instruction and as a result a man who is guilty of a very serious offense is acquitted. Under the Elston bill and under this bill the commanding officer cannot do anything, but he can certainly write to the Judge Advocate General and take this fellow away and put him to work reviewing tort claims; he is no good as a law officer. The result would not be any different if he had him sitting in there with the court. If he is wrong, he is wrong. If he is as he should be, a good lawyer, a man who knows the military law, knows the elements of offenses, knows the criminal law, he would not make mistakes and he will be much more helpful to the court sitting in with them at their deliberations.

I think I can say without any fear of contradiction that no lawyer who has ever been in a closed session of a court martial will think differently, and no nonlawyer who has ever been in a closed session with a really good law member will think differently on that.

Am I keeping you gentlemen overtime?

Mr. BROOKS. Yes. The Congress is in session and we have this armed forces composition bill coming up this morning I think, therefore, if there is no objection, we had better adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 11:15 a. m., the committee adjourned until 10 a. m., Thursday, March 17, 1949.)

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UNIFORM CODE OF MILITARY JUSTICE

THURSDAY, MARCH 17, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The committee met at 10 a. m., Hon. Overton Brooks (chairman of Subcommittee No. 1) presiding.

Mr. BROOKS. Gentlemen of the committee, here is the proposed plan, and if it isn't agreeable, I wish the members would indicate. We want to finish with the general witnesses today. I believe we can by noon. There are three more witnesses this morning. We are going to recall Colonel Wiener to finish with his testimony. He was here testifying yesterday. We will finish with the general witnesses by noon, we believe. Tomorrow, we would like to begin reading the bill section by section.

In reading the bill section by section, we will have the help of our expert assistant here, who sat with the committee and read the bill section by section, and helped to frame it and draft it; and we will have the assistance of Mr. Larkin; and we will have the assistance of others who are intimately acquainted with the sections of the bill.

Mr. HARDY. Mr. Chairman, do you have any idea as to how long a time it will really take us to do this thing section by section? It is going to be a long, drawn-out affair isn't it?

Mr. BROOKS. It depends on the time we put into it. Congress is not in session tomorrow. If the committee so wills it, we can begin by meeting tomorrow morning at 10 o'clock and go on through as far as we want, and we can really take out a big bite tomorrow in this bill.

I think, too, at a time when it is in our minds, and the technical objections that have been explained to the committee are in our minds, it would be a very good time to really get into the reading of it section by section.

Mr. HARDY. I think that is probably correct. Is the staff going to have an analysis of all of these criticisms for us by each witness?

Mr. SMART. That is correct, Mr. Hardy. I have it already prepared through the first 27 sections and will complete the remainder of the bill this afternoon, as to the objections or endorsements of the various and sundry provisions of the bill. A copy of that will be made available to each of you, with the permission of the chairman.

I anticipate, in response to the question you raised a moment ago, that it will probably take about 4 or 5 days of hearings to go through this bill section by section. Many of the sections will go rapidly because no point of objection has been raised. Others, such as article

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22, command control, will take a lot of discussion and time. So I believe that it will take 4 or 5 days; and I am hopeful that by perhaps next Friday, we can conclude the committee consideration of this bill and have it ready to report to the full committee.

Mr. HARDY. As far as I am concerned, Mr. Chairman, I believe we would be able to meet this afternoon. The House plans to adjourn early.

Mr. ELSTON. I have a meeting of the Atomic Energy Committee this afternoon.

Mr. BROOKS. I think we can just as well use the afternoon, too, to go over the bill. I think the members of the committee can get a great deal out of the bill by reading it over themselves, because it is so technical that you have to read these articles very slowly to appraise them properly. Since Mr. Elston can't be here this afternoon, I think we had better wait until tomorrow morning to begin.

Mr. ELSTON. Of course, you can go ahead without me.

Mr. BROOKS. We want you, and there is no meeting slated for this this afternoon if we finish these general witnesses.

Mr. ELSTON. I take it, Mr. Chairman, you are going to proceed about like we did last year: Read the bill section by section and have representatives of all the services here while we are doing that, so that they can state their positions?

Mr. BROOKS. That is the general idea. Of course, if it isn't necessary to keep representatives of the different services here, we wouldn't want to detain them unless we feel the need of them.

Mr. ELSTON. I don't believe they mind being here. Colonel Dinsmore was here last year and as we read it section by section they were in position to answer questions that came up in connection with the sections, and it seems to me that we almost have to have them here in order to get their viewpoint, because in a general statement of the whole bill, it is almost impossible for them to cover every particular phase of the bill. If, as we read a section, they can state their position on that section, it was mighty helpful to us last year, and I know it would be this year. I think we might inquire and find out whether or not it would be convenient for them to be here during the time we are reading the bill.

Mr. BROOKS. That is my thought. More than that, though, if we come to a section and we do feel the need of someone to explain it, any branch of the service, or perhaps a patriotic organization, we can pass that section by until we do get the witnesses.

Mr. SMART. Mr. Chairman, I would like to elaborate a little bit on the point that you have just raised. It was my thought, and it is my suggestion, that we proceed section by section, and when we get to such articles as article 22, which raises command control, and again goes into the proposition as to whether or not you are going to provide a JAG Corps—while it is not in the bill, it has been raised by every witness that has testified before this committee—those are matters on which the departments will want to be heard.

I think it may go as high as the Under Secretaries or Assistant Secretaries, and maybe even the Secretaries of the departments who will want to come in and be heard. So I would suggest, on sections like that, that we pass them until the end of the bill; then consolidate those particular sections, bring in the departmental representatives,

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and have those things thrashed out completely and thoroughly rather than having those people, who are equally busy, come here each day.

I might further add that Mr. Larkin has, of course, attended all of these sessions. He and I both have extracted all of the points of agreement and disagreement on each of the sections; and he will be prepared to give the departmental positions on most of those things.

Mr. ELSTON. That is what I meant, Mr. Larkin, and possibly Colonel Dinsmore. He helped us a lot last year. And we might have any representatives of any other agency who might want to be heard.

Mr. BROOKS. We will have all the witnesses that members of the committee want present, I assure you of that. We need all the help we can get. I am not jealous and I am sure nobody else is jealous of the learning or information which can be given to the members of the committee.

If that is all right with the committee, then, we will recall Colonel Wiener, Col. Frederick B. Wiener, as a witness.

Mr. BROOKS. Colonel Wiener, you were testifying yesterday when the bell rang, and we had to quit.

STATEMENT OF COL. FREDERICK B. WIENER—Resumed

Colonel WIENER. Yes, sir. I come to article 27 (b) of the bill, which makes lawyers mandatory for trial counsel and defense counsel of all general courts martial in the three services. The requirement in the present bill, article of war 11, is that if there is a lawyer for the prosecution, there must be one for the defense. The present bill also makes that requirement for special courts-martial equality; that is written into the new manual for the Army and the Air Force.

I think it is entirely proper when you have a lawyer for the prosetion that you ought to have one for the defense, although I think it is also fair to point out that the Federal Constitution doesn't require that sort of thing in the States. There has been a persistent drive to get the Supreme Court to hold that the fourteenth amendment requires a State to provide counsel for an indigent prisoner in all circumstances; and up until now that attempt has failed. The cases are *Betts* v. *Brady* (316 U. S.), and *Butt* v. *Illinois* (332 U. S.).

The Supreme Court has never gone that far.

While the equality provision is sound and makes for a greater fairness, the mandatory provision for lawyers for defense counsel and prosecution in every general court martial, such as this bill provides in article 27 (b), is in my judgment unnecessary and thoroughly impractical.

Now, I will document those characterizations.

It is unnecessary because a lot of your cases that go before general courts are really police court cases. A man goes A. W. O. L. for more than 6 months. That is prima facie desertion and it is going to be tried by general court.

A soldier steals a watch worth $50. That is a general court case.

Now, I used to think, why is it necessary to try petty thieves by general court-martial in the service? The answer is that nothing so quickly disrupts the morale as a sneak thief in a barracks. Even if he just takes a pack of cigarettes, you have to stamp that out. Cases like that, desertion, the simple cases of disobedience of orders, the

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simple larcenies, those are not cases that require two trained lawyers on both sides.

In fact, in time of peace, in the British Colonial courts, cases like that are prosecuted by police officers and sometimes even by the native police sergeants. You just don't need a law school education to try or defend that kind of a case.

It is worse than unnecessary, it is impractical. You cannot get, in time of peace, the number of lawyers that this bill would require. You cannot get them for the services. I can speak on that with some degree of assurance because last summer I was on duty, active duty in the War Department, and one of my assignments was to study the problem, the personnel problem for the Judge Advocate General's Department of the Army under the provisions of the Elston bill. Where would they get the lawyers in time of peace to be permanent commissioned career officers of the Army to try every case by general court?

Mr. ELSTON. How would you draw a distinction between what is and what is not a serious case?

Colonel WIENER. I would leave it as you have it in the present bill, "if available," and leave it to the good judgment of the staff judge advocate to decide whether he needs a lawyer on both sides. After all, the normal run of cases never reaches the commanding general except for the final approval. It is handled by the staff judge advocate.

Now, if I have a case of murder and I am staff judge advocate, I will see that a lawyer prosecutes and, of course, that means I have to get a lawyer to defend. On the other hand, if it is a simple desertion, or someone just told the officer that he wouldn't go out and dig the ditch, you can get any bright young lieutenant. In time of war, I agree it is a horrible shocking waste of military manpower to take a line officer for those details. In time of war, you can get all the lawyers you want. In time of peace, you just cannot get the lawyers. Now, the lawyers in the Army are almost as difficult to get as doctors are. They just don't come.

Congress has done nothing to make the career of the regular Judge Advocate more attractive. As of the first of this year, they cut his pay by taking away the tax exemption. They have given him a single promotion list, but that list doesn't give him any faster promotion than he had since the Officer Personnel Act was passed. It is just extremely difficult to get the lawyers you need.

Now, if you make it a mandatory requirement that everybody who prosecutes a desertion case at every Army post in the United States, at every naval base in the United States, at every Air Force base in the United States, where are you going to get those lawyers in time of peace as permanent career people?

Mr. HARDY. You may have a practical difficulty involved there, but aren't you running a right serious risk that the accused may not get justice out of the thing, and there may be an element of prejudice involved?

Colonel WIENER. No, sir; and I will tell you why: Because if you have a lawyer for the prosecution, you still have to have a lawyer for the defense. If you have a layman for the prosecution, that is, a young infantry officer, a young artilleryman, a young nonflying Air Force officer, you have a similar person on the defense. You

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don't run into any danger. An ordinary desertion case, what is there to it?

Mr. HARDY. How do you distinguish as to who is going to distinguish between the ordinary desertion case and one that may be somewhat involved?

Colonel WIENER. The staff judge advocate because before he recommends that the case go to trial, he has seen the transcript of evidence, or it is a simple case of putting in a report and showing the apprehension a year later.

Mr. HARDY. I have had several cases in my own district where I don't think justice was reaped out to them, and there was at least one lawyer on the court.

Colonel WIENER. I am saying in time of peace, with this bill, you won't get the lawyers. What are you going to do if you don't get the lawyers to try these cases? Either you can't get them tried or they all get out on habeas corpus later. You are up against a practical problem. Where are you going to get the lawyers for your peacetime armed services to try and defend every case by general court martial?

If, by making the career sufficiently attactive, by raising the pay, by giving them even more promotion rights, and so forth, you do attract that kind of lawyer, is it a good use of your military dollar?

Mr. DEGRAFFENRIED. Colonel, you said a minute ago you had to have lawyers in certain cases.

Colonel WIENER. Yes.

Mr. DEGRAFFENRIED. Like murder cases.

Colonel WIENER. Yes.

Mr. DEGRAFFENRIED. Why couldn't those same lawyers handle the larceny cases?

Colonel WIENER. Because the lawyer you get to try the murder cases normally processes claims, reviews boards, and does other legal work, and you get him to try one case. You can't get him to try all the general court-martial cases tried in the Army, Navy and Air Force.

Mr. DEGRAFFENRIED. I could conceive of a larceny case being a very serious case.

Colonel WIENER. There is no question about that.

Mr. DEGRAFFENRIED. It seems to me a man's rights in a larceny case, especially a grand larceny case, should be protected equally as well as in a murder case.

Colonel WIENER. My point is, when you have a grand larceny case, you have the man who is the PX steward, you have the money missing from the safe, you have the money found under his mattress. I say, as a matter of experience in reviewing and handling those cases, you don't need a lawyer to prosecute that PX steward.

Mr. DEGRAFFENRIED. Haven't you a good many involved cases of law come up when grand larceny cases come up?

Colonel WIENER. Yes, but ever since the amendment to the ninety-third article last year, which took out the distinction between larceny and embezzlement, most of those are gone. The easiest way for a thief to get loose in the Army, before the Elston bill, was to commit an offense that was on the borderline between larceny and embezzlement; and if the staff judge advocate guessed one way, that it was larceny, and the board of review guessed the other way, that

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it was embezzlement, the fellow went scot free. That has been stopped. "He that takes what is not his'n; he shall certainly go to prison."

When the case is not simple, it is up to the staff judge advocate. You don't need a lawyer to try it. Where are you going to get these lawyers? I had to study the problem last summer, and you just can't get the lawyers; and when you can get them, when you can get these thousands of lawyers for the armed services just to try what really are police court cases, are you really spending your military dollar wisely; when, as I understand it, one of the real problems on the 70-group Air Force is that it is going to cost an awful lot of spending money.

So that to make this a mandatory requirement in time of peace that every general court-martial case has got to have two lawyers on prosecution and defense, it is not necessary; it is not practical. Now, in wartime it is different. In wartime, lawyers are literally a dime a dozen; any and every lawyer wants to get into the service; and it is a shame to take a doughboy, who ought to be training his platoon, or an artilleryman, who ought to be studying up on the tables, and make him try cases. Use the lawyers for that in wartime.

To make it mandatory in time of peace, you are going to make it impossible for these cases to get tried. With your shortage of lawyers, we haven't got the lawyers, and here we have all these cases, and we have to try them by special court, which frequently will defeat this bill.

Mr. BROOKS. Colonel, let me ask you a question on that point. What would you think of handling it as it is handled ordinarily in civilian courts, permit the accused, the defendant to ask for counsel when he wants it, and the court to appoint it?

Colonel WIENER. Well, the Army has been way in advance of that for years. Ever since 1920, anybody appointing a general or a special court has had to appoint defense counsel. In a number of respects, you know, that 1920 Articles did much more for an accused than the civil courts did. They always gave him counsel. It may not have been the most competent counsel, but he had someone there to speak for him. Civil courts didn't always do that. It gave him a transcript of the record; and until the court reporter bill, about 1943, you never got that in the civil courts unless you could pay for it; and they gave him automatic appellate review in every case; and the civil courts didn't give you that.

I have been in Federal courts down in Alabama. I was trying a case in Anniston once. The case ahead of mine involved some bootleggers. The "revenoor" was on the stand, the witness against them; the defendant would take the stand in his own behalf; no transcript; charge to the jury; the jury would come out, bring back the verdict; the man had no lawyer, except someone such as the young fellow the court would appoint, no record, and, of course, he couldn't take an appeal.

Now, the fellow tried for desertion in the Army system would have had a lawyer, would have had a written record, and would have had his record reviewed on appeal by trained people, without his asking for it or without his spending any money. So that the accused, under the Army Articles of War, has had a great many safeguards.

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I am just saying, gentlemen, the present provision of the Elston bill, "if available," yes. If you have the lawyers, by all means, use them. If you have a lawyer on the prosecution, you have to balance the thing and make the odds fair by having one for the defense.

Mr. BROOKS. By the same token, in civilian courts, if you get into a local city or local court, they don't provide lawyers for each defendant.

Colonel WIENER. The Constitution says, as now interpreted in *Betts* v. *Brady* and *Butt* v. *Illinois*, that the State doesn't have to furnish them. The Federal Government said that the sixth amendment does require it.

Mr. DEGRAFFENRIED. A great many States have to furnish them in capital cases and not in noncapital cases.

Colonel WIENER. Oh, yes; and my point is, when you have a case that the staff judge advocate feels a lawyer should prosecute, you have to have a lawyer for the defense.

Mr. DEGRAFFENRIED. In all civil cases that I have seen tried in Alabama, there is always a defense counsel appointed to represent the defendant, if he cannot retain one himself.

Colonel WIENER. Since 1938, *Johnson* v. *Zirks*, (304 U. S.), they had to appoint them; but nobody ever supposed so before.

Mr. ELSTON. They always appoint them in Ohio, in the Federal Courts and State courts, too. Any person indicted by a grand jury gets counsel appointed by the court if unable to employ counsel; and in Federal courts they are always appointed for any person charged by indictment or information.

Mr. BROOKS. That is more or less the general rule. In local city courts, municipal courts, that rule doesn't obtain in certain areas I know.

Mr. ELSTON. Of course, there is no provision in the military code for the appointment of counsel in summary court-martial cases, and police court more or less corresponds to summary report.

Colonel WIENER. All I am doing is urging you gentlemen not to put into effect as a strait jacket a requirement which isn't necessary, in fact, and which, in time of peace, would just make it utterly impossible. I mean, you are going to have appropriate money to hire these lawyers to try GCM cases.

Mr. ELSTON. Don't you think an accused person is entitled to counsel in any case wherein he may receive a dishonorable discharge upon conviction?

Colonel WIENER. He gets counsel.

Mr. ELSTON. Well, he may.

Colonel WIENER. He gets counsel.

Mr. ELSTON. He does get counsel, but you are saying that——

Colonel WIENER. And he gets a lawyer if the man prosecuting him is a lawyer. All I am saying is, don't make it mandatory for the services to provide lawyers on both sides of every general court case.

Mr. ELSTON. In any general court-martial conviction, there can be a dishonorable discharge?

Colonel WIENER. That is correct.

Mr. ELSTON. So how does it help the accused any if neither side has a lawyer?

Mr. DEGRAFFENRIED. Suppose he is tried on hearsay testimony or just any kind of testimony?

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Colonel WIENER. Well, in the first place, the lay trial judge advocate trying a case will prepare his case sufficiently that he doesn't get hearsay in. In the second place, under the Elston bill you have a trained lawyer as law member who will rule out hearsay; and in the third place, you have his rulings reviewed by the staff judge advocate and by the board of review; and the rule in military law is that failure to object doesn't constitute a waiver. So that in actual practice the possibility of a man going out on hearsay testimony, getting a D. D. on hearsay, is so remote as to not be a possibility.

Oh, it may have happened once; yes. We have had a Federal judge go to jail for bribery. That doesn't mean we can impugn the integrity of the judicial system.

Gentlemen, you are going to have to appropriate an awful lot of money to supply the lawyers that will be necessary to run the simple cases, desertions, and the small larcenies, and the disobedience cases, if this bill goes through.

Now, I would like to turn to the judicial council of three civilians. I don't think it is sound; I don't think it is necessary; and I think it is wholly self-defeating; and I will document those characterizations.

In the first place, you don't provide for Senate confirmation. You don't give fixed terms. The result is that these people will be subject to all sorts of pressure; personal pressure, political pressure.

Mr. DEGRAFFENRIED. What article are you discussing now?

Colonel WIENER. Article 67.

Mr. ELSTON. I think, Colonel, it is going to follow, as a matter of course, if this is adopted, the committee will recommend a certain term and confirmation by the Senate. I am only speaking for myself, but I know in all probability, no member of the committee would want to leave anything as indefinite as that.

Mr. BROOKS. You needn't worry, the Senate will put it in.

Colonel WIENER. All right, assuming they do. You are setting up a specialized court instead of a court of general jurisdiction; and you are staffing it with civilians. Now, the fact of the matter is—and I think we should face it frankly—that the appointments to the specialized courts of our judicial system haven't attracted the same sort of talent that the courts of general jurisdiction have attracted. Some of our experiences with the United States Commerce Court have been rather unfortunate.

However, I think the basic difficulty is the notion that this court shall be composed of civilians. I suppose, simon-pure civilians. I don't know whether, under these provisions, a Reserve officer would be deemed contaminated by his prior service or present status, and so not eligible for this civilian court. But, more important, you take three civilians, three high-minded civilians, learned in the law, and they have the powers that it is proposed to give them in this bill, and first, they come up against a case like that of Gen. Fitzjohn Porter, who wasn't too successful at the Second Battle of Bull Run or, certainly, for the benefit of the chairman, the Second Battle of Manassas.

Mr. BROOKS. Thank you.

Colonel WIENER. Now, the problem and the case of Gen Fitzjohn Porter required a very keen appreciation of military factors. How are you going to get three civilians who are going to know anything about that? Just where are you going to get civilians who are going to be able to pass intelligently on a case like that of Fitzjohn Porter;

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or, suppose the cases of those people of Pearl Harbor had been tried. It would have been pretty difficult for the civilians to evaluate all the factors.

Suppose you get a case of desertion in wartime. Well, now, desertion, when it is jumping ship, gangplank fever, when you are absent for a few days just when the boat is about to sail, the man who has been without military experience will say, "Good Lord, this soldier was a. w. o. l. 3 days, and they gave him 40 years." Well, if you are a. w. o. l. from Fort Myer for 3 days in time of peace, that is one thing; but to be a. w. o. l. from your unit just when your unit is sailing, that is something else.

Take a case of misbehavior before the enemy. A man runs away in battle. How can the person with purely civilian experience evaluate that? I was faced with that problem when I was the staff judge advocate of the Thirteenth Air Force; and I wondered just how I was qualified to deal with a case of some fellow with maybe 24 missions behind him, refusing to go on the twenty-fifth. How was I, a country lawyer sitting where lawyers generally sit, qualified to pass on that sort of problem?

Mr. ELSTON. Colonel, I am not passing on whether it be civilian or military. Our bill last year provided for military and that is what we favored at that time.

The point you are making now would hardly come before the judicial council because the judicial council, under this bill, only reviews questions of law.

Colonel WIENER. Well, there has been a question on just this kind of a case I am raising. Now, I didn't have to face the dilemma; I didn't have to make a careful inquiry as to whether I was really cast in a heroic mold or not, because I was released from the Air Force before the case arose.

There was a question of law on which two assistant judge advocates general, in two different theaters, differed. The question was whether at base A in England men sent to bomb the town of X in Germany, when the crew member refuses to go into the plane in England, a thousand miles from the target, is he guilty of misbehavior in the face of the enemy? The two branch officers differed on it. I think it makes an awful lot of difference whether the person deciding that question of law has had military experience.

Now, as a matter of fact, I don't think it is so important whether you say that these people will be picked from among the ranks of the military or civilians, whether they will have civilian status when they are picked. In England they pick a judge advocate general generally from the ranks of the Army, and then he becomes a civilian. But I think it is terribly important to have some sort of provision which is not present here that the people on this judicial council have military experience.

I mean, a man may be a civilian now, if he has been through a war or been through two wars, he has an appreciation of those things. You could commission a person from the cloister or from the university campus and make him a seven-star general; but if he didn't have the experience, he wouldn't be able to appreciate these problems.

I am distressed by the thought that seems to be behind this bill, that somehow a simon-pure civilian is better able to decide military problems than a man with military training or background; and it

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seems to me that this whole attempt to drive a wedge between civilians and military people—after all, we are all citizens; we are all civilians and when war comes we put on uniforms; when the war is over, we take them off. Any Army officer doesn't cease to be a citizen because he is an Army officer. It seems to me that this distinction just feeds as grist for the party-line mill, always trying to distinguish between civilians and military men.

Take our conduct of the war: We had a military Chief of Staff, General Marshall; and later he became a civilian and was a very fine Secretary of State. We had a Secretary of War, an eminent man, Henry Stimson, and he had been a colonel of field artillery in the World War. Take the British leadership of the war; Churchill, a civilian, his military chiefs of staff, General Esmay, sort of liaison between them. There was never any question of civilian versus military. After all, we have a civilian Commander in Chief; we have civilian secretaries. That is fine. But why interpose civilians in between and turn over to them for decision matters that are basically military?

Now, look at the delay; look at the delay in the appellate processes provided for in that bill. What is your deterrent effect? You are in the middle of the war and you have a poor unit, and a run—and, unfortunately, even our soldiers run.

I think, possibly, the chairman may have in mind some units of the Union Army that made some great retrograde advances. Now, where is your deterrent effect if you are going to have that kind of appellate review; and what you will get, particularly with this notion of the law officer spreading his charge on the record, is not substantial justice, but all flyspecking and comma chasing; and you will have a system that defeats itself, because the purpose of the system is to maintain the integrity of the Army.

Mr. ELSTON. I don't understand just where you think the delay is going to occur.

Colonel WIENER. The delay is going to occur in going through the right of appeal. I think it is 67 (c).

Mr. BROOKS. The 30 days, you mean, in 67 (c)?

Colonel WIENER. No; I guess it is 67 (b) (3):

> All cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the judicial council has granted a review.

That is only 45 days.

Mr. DEGRAFFENRIED (reading):

> The judicial council shall act upon such a petition within 15 days of the receipt thereof.

Colonel WIENER. Yes; I see it is only 45 days. The thing I can't see is, what is the valid reason behind this? Now, if we were sitting here as an original proposition, with a completely blank page before us, at the year 1, that would be one thing; but why do we suddenly need to change our entire system of military law?

I mean, after all, trial by jury is not some modern invention like radar or television which the founders didn't know about. They knew about trial by jury; they preserved it for civilians. They knew about courts martial and they decided that was a more suitable system for an armed force.

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They say, "Well, we want to have confidence in our system of military justice." Confidence to whom? To the decent proportion of the services or confidence to the fellow that committed the offense?

Mr. ELSTON. What appeal would you have?

Colonel WIENER. I think the present system in the Elston bill, with two modifications, would be just about ideal.

Mr. ELSTON. What two modifications?

Colonel WIENER. Those two modifications are, first, I wouldn't send a bad-conduct discharge to the Board of Review because the whole purpose of a bad-conduct discharge is to provide an exit from the service for the man who isn't criminal, but just is worthless for military service.

Now, he gets two reviews. He has a verbatim record reviewed by the original convening authority; then he gets a review by the staff judge advocate and confirmation by the officer exercising general court-martial jurisdiction.

Mr. ELSTON. Colonel, I can't agree with you on that. A man who gets a bad-conduct discharge. If he is guilty and gets a bad-conduct discharge, he, of course, should not be in the Army. But, you can appreciate that the man discharged to civilian life with that kind of discharge has that hanging around his neck the rest of his life; and he is entitled, whether he is guilty or innocent, to a complete review of his case to see whether or not any error intervened and substantial justice was done in his case; and you probably would not get it unless you had some sort of a board of review that had nothing to do with the original proceeding, to give a complete review to the case.

Colonel WIENER. My point is this, sir: The bad-conduct discharge is new in the Army. The usual exit right for the deserter or petty thief or someone who disobeyed orders, for over 150 years, was a dishonorable discharge. As I understood the purpose of the bad-conduct discharge, when it was recommended by the Vanderbilt Committee, one of whose members had had occasion to review the Navy system, the idea was to provide something which had something less of a stigma. Bad conduct and dishonor are two different concepts.

Mr. ELSTON. I am not arguing against it. I think it was a good idea to have it.

Colonel WIENER. My point is, and perhaps I haven't made it clear, that in order to encourage resort to the discharge which has less stigma, you ought to make it a little easier. As it is, there isn't any incentive to resort to the bad-conduct discharge, because it is just as difficult to get them out as with a dishonorable discharge. That is my thought behind it.

Mr. ELSTON. If you could be in the position of some Members of Congress who have had complaints from men who got bad-conduct discharges about their inability to obtain jobs in civil life because of their record, you would understand why we feel, a great many of us, that there should be a complete review so that no possible injustice can be done.

Colonel WIENER. You take away the incentive to resort to the bad-conduct discharge instead of the dishonorable discharge.

Mr. ELSTON. I don't think so if your commanding officer is conscientious and fair and wants to give the kind of discharge that a man is entitled to.

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Colonel WIENER. Well, I mean you have a tradition of 150 years that the deserter goes out on a dishonorable discharge. You are trying to change a habit of thought and I think you will do it more easily if you provide an easier way for eliminating the undesirable men.

Mr. ELSTON. I can't see any harm in a review.

Colonel WIENER. He does have review.

Mr. ELSTON. If the man is guilty, the reviewing court is going to say so. If he is not guilty, they will say so. In any event, the accused has had his day in court; and every person is entitled to that.

Colonel WIENER. He has had his day in court, and he has had double and possibly triple review.

Mr. ELSTON. I am not in favor of the judicial council reviewing on questions of fact; but I do think a review board should.

Colonel WIENER. The second change that I think would be helpful in the Elston bill would be that one member of the judicial council should be a line officer, because after all in the steam of the Elston bill the board of review and the Judge Advocate General have pretty well sifted out the legal problems. When you get to the judicial council, it is a matter of confirmation—whether this lieutenant was so drunk that he ought to be dismissed or whether he was really dishonest when he passed the bad checks or slightly inebriated. You have a disciplinary action. I think it would be helpful if one of the men were a line officer.

Mr. BROOKS. You get into this point: What about combat? Shouldn't one of them be a combat man? You have the Wac's in there. If you try to get representation, you carry it too far.

Colonel WIENER. My point is this: When you get up to confirmation, you have two problems: One is legal and one is disciplinary. I think one of the very helpful things in the present Navy system is that when the general court records go to the Secretary of the Navy, he has the advantage of two reviews. One is by the Judge Advocate General of the Navy for legal features; and one is by the Chief of the Bureau of Personnel, for disciplinary features.

I think that would be particularly helpful when you consider what happened to officer cases in this country in World War II. One of the charges made before the committee 2 years ago was that there was a disparity in the treatment of officers and enlisted men. I think, from my own experience, that that charge had considerable foundation. It was just too hard to try an officer. Knowing how you did get them tried, and we went to the Board of Review, and we went through the Judge Advocate General, and then went to the White House, why, he had a very good chance of getting off. For the most part, there was never anyone who exercised or who presented the disciplinary point of view.

I think it would be helpful if that were done.

Now, reverting to the present bill, there is a provision about jurisdiction over the inactive Reserves in article——

Mr. BROOKS. Before we get to that, I want to ask one question for the record. In the event a bill of this character is passed, what will happen, if anything, to the special board which we appointed to review dishonorable discharges?

Mr. SMART. You mean administrative discharges also?

Mr. BROOKS. Yes.

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Colonel WIENER. Just one second. I have a reference here. Under new article 76, page 63, under that provision, the board couldn't pass on any discharge.

Mr. BROOKS. Cease to exist, wouldn't it, in effect?

Colonel WIENER. Yes, except for the older cases.

Mr. BROOKS. Now, what would you think of putting in a proviso there that would say, in time of war, for instance, the Board might serve to review dishonorable discharges?

Colonel WIENER. Well, of course, it would be a curiously inconsistent provision. You have in there that the action shall be binding upon all courts. You are running into a really difficult constitutional question or habeas corpus, as to how far this draft article 46, and its counterpart, article 50–H of the Elston bill, can even bring the Federal courts back to what was the traditional scope of habeas corpus; I say it is inconsistent because on the one hand you say, in terms, that the courts shall not review court martial cases; but you set up a Board to do the same thing.

Mr. BROOKS. Well, I can see, for instance, in time of war where there is a reason for special action in reference to dishonorable discharges; whereas, in time of peace, you don't have a parallel situation, it seems to me. In time of war, you take your men in hurriedly and everything moves rapidly. A man slips up and he is given a dishonorable discharge. He is gone and forgotten about. In time of peace, however, those things are more methodical; and the soldier or the sailor or the airman is prepared to go into service; and by far the majority of them make it a career and expect to remain in service, and they are better versed on the violations.

Colonel WIENER. Well, it seems to me that you have so many safeguards here, you have the Board of Review, you have the Judicial Council, you have a petition for new trial. I would think, myself, that you would want to Review Board only for administrative discharges that didn't go through the system.

Mr. BROOKS. You think it should be retained for administrative discharges?

Colonel WIENER. Yes, because there there is a real possibility of injustice.

Mr. BROOKS. Do we need any change in this bill to cover that?

Colonel WIENER. I don't think you need any change to cover that.

There is a point in article 2 (3) of this bill, on page 4, jurisdiction over Reserve personnel who are voluntarily on inactive duty training authorized by written orders. Well, in the first place, from the Army point of view, that is rather unclear because normally inactive duty training doesn't contain written orders. But I think there is a more serious and more fundamental objection to it. I don't think it is necessary; and I don't think it is very practicable.

If you have a Reserve officer on inactive duty—of course, if he is on active duty, he is like a regular officer for all disciplinary purposes—if you have him on inactive duty, and he commits something which would be a civil offense, such as larceny of Government property, you can deal with him much more expeditiously and easily in the appropriate civil tribunal. On the other hand, if he commits a military offense, or shows he is a pretty worthless fellow and had better get out of the Reserve, then I think you do better to board him, revoke

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his commission after having appeared before a board, instead of starting the somewhat cumbersome machinery going.

As to retired officers, I would certainly retain the jurisdiction over them. I think it may be of interest to the committee to recall that in 1916 Woodrow Wilson vetoed the Army appropriation bill because the Articles of War which were attached didn't provide for court-martial jurisdiction over retired officers. I think it might be well for the committee to plug up that little loophole which the Hurtzberg case left, which was based entirely on statutory considerations and, in effect, made an honorable discharge a pardon for undetected crime.

He was a naval chief charged with mistreating American fellow prisoners in the Philippines. His term of enlistment expired in March '46; he was given an honorable discharge; reenlisted the next day, and thereafter his offenses came to light. The courts held there was no jurisdiction to try him after his reenlistment. So, in effect, they gave the honorable discharge which was issued by a 2½ striper at the Brooklyn Navy Yard, who, of course, couldn't know what Hurtzberg had done in the Philippines, in effect, as a pardon. The courts specifically said there was no constitutional question. I think that ought to be buttoned up.

There was one other point I wanted to make, and then I am open to any questions you gentlemen may have. It was suggested by Mr. Rivers yesterday.

Just let's sit back and consider what one of the fighting problems is on this bill: We make a man a multistarred commander. He is generally trained at public expense; he is sent to service schools at public expense; and we give him a command of several millions of men; and he gives the signal to go; and as a result of that signal, thousands of men lose their lives and thousands more are maimed or blinded; and we don't object to that because that is one of the harsh realities of war.

Yet, when it is proposed that that same general, with those incalculable powers of life and death over his fellow citizens, be permitted to appoint a court for the trial of a soldier who has stolen a watch, oh, no, we can't have that; we have to have a panel. Doesn't make sense; does it?

Mr. BROOKS. That was the point I had in mind yesterday, that some of the proper orders of the command can be much more harsh and much more unfair than the results of a court martial.

Colonel WIENER. Certainly; and I say, if you trust him to command, if you trust him with only the lives and destinies of these millions of citizens under his command, that actually with the future of the country, because if he fails, things are going to be rough, you can certainly trust him with the appointment of a court.

Mr. BROOKS. Don't you think this, also, Colonel? That the average commander who has the best interests of the service in mind, and certainly the best interests of his command, knows that by obtaining justice as a result of these courts martial, it is one way to increase the morale of his command and provide greater efficiency?

Colonel WIENER. There is no question about it, Mr. Chairman, at all.

Mr. BROOKS. Are there any questions, gentlemen?

Colonel WIENER. Mr. deGraffenried had one question on bread and water.

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Mr. DEGRAFFENRIED. Yes; I did. I would like for you to discuss that.

Colonel WIENER. Of course, 5 days bread and water, when you think of a citizen in the armed forces, is pretty harsh. But look at the problem you are up against sometimes. You have someone in the guard house or in the brig, and he is duly convicted. His case has been reviewed and fly-specked; and there is no question he is going to be in that guard house for quite a spell. Then he just decides, "I have had enough of this;" and he gets an order, and he says, "No."

They say, "You can be tried."

He says, "I have already been tried."

They say, "You can be sent to the guard house."

He says, "I am already in the guard house."

He utterly refuses to cooperate to the extent that he won't leave his cell to go to the latrine. What are you going to do with a man like that? That is not an imaginary case. What are you going to do with a man like that?

Now, one solution would be to look the other way and turn the provost sergeant loose on him to beat the "b'jesus" out of him. That is not a very civilized way of handling it.

Those are actual problems. Five days bread and water may make a citizen of him again.

Mr. BROOKS. Mr. Smart?

Mr. SMART. On that very point, I would like to point out that Colonel Wiener is referring to the punishment of someone who is in confinement. That is a different proposition than the punishment for disciplinary infractions, for a disciplinary infraction that a man has committed not after but before he has been sentenced and confined by a courts-martial. I am not saying that bread and water is a bad punishment; but I do say, I don't see the relevancy of the statement.

Secondly, I would like to advise the committee that Colonel Wiener was the attorney for the Government in the case of *Wade* v. *Hunter* on a question of jeopardy. At that time, I understand he was in the Solicitor General's Office, and represented the warden, Mr. Hunter, in that case, which is still pending. Colonel Wiener is no longer associated with the case; and I know he feels he will be self-serving if he volunteered any information on it; but I think his views on this jeopardy question, which is rather acute here, would be helpful to the committee. That pertains to article 44 of the bill.

Mr. BROOKS. Would you care to make a statement on that, Colonel?

Colonel WIENER. Yes, sir. Article 44:

> No person shall, without his consent, be tried a second time for the same offense; but no proceeding in which an accused has been found guilty by a court martial upon any charge of specification shall be held to be a trial in the sense of this article until the finding of guilty has become final review after review of the case has been fully completed.

The difference between that concept of jeopardy and the fifth amendment is this: The Article of War says, no person shall be tried the second time for the same offense; and that languages goes back to 1806. The language of the fifth amendment is:

> * * * nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.

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Then the question is, when does jeopardy attach? There are a lot of decisions, fairly mechancial, jeopardy attaches when the jury is sworn; jeopardy attaches when the first witness is called; jeopardy attached when testimony is given. But suppose there is a mistrial because of disagreement of the jury; and you have had the jury sworn; you have had witnesses called; and you have had testimony given; and everybody agrees you can try him again.

Going back to the older cases, the old decisions in the Federal cases, written by judges who were more nearly contemporaneous with the Constitution than any of us, they said:

> Jeopardy in the fifth amendment means conviction or acquittal;

and this is from Mr. Justice Washington, in the case of *United States* v. *Haskell*, Federal Case No. 15321:

> We are clearly of the opinion that the jeopardy spoken of in this acticle

That is the fifth amendment—

> * * * can be interpreted to mean nothing short of the acquittal or conviction of the prisoner and the judgment of the court thereupon. This was the meaning affixed to the expression by the common law. The moment it is admitted that in cases of necessity the court is authorized to discharge the jury, the whole argument for applying this article of the Constitution to a discharge of the jury before conviction and judgment is abandoned because the exception of necessity is not to be found in any part of the Constitution; and I should consider this court as stepping beyond its duty in interpolating it into that instrument if the article of the Constitution is applicable to a case of this kind.

We admit the exception, but we do it because that article does not apply to a jeopardy short of conviction.

That principle has been lost sight of in all the mechanical Corpus Juris decisions; and so I feel that article 44, as it now stands, is a correct statement of jeopardy; and, as a matter of fact, is closer to the original interpretation of the fifth amendment than a good many cases in the civil courts.

Mr. SMART. Then you take the position, Colonel, which is contrary to that announced by most of the witnesses, that once the court is sworn, that jeopardy then attaches?

Colonel WIENER. Well, that just isn't so, because, take a trial for murder in any United States district court: The jury disagrees. Well, now, if that rule of jeopardy attaches were correct, the man couldn't be tried again; and, of course, he can.

Mr. ELSTON. Isn't the rule this, Colonel: That there must be something beyond merely the impaneling and swearing of the jury? The jury must be discharged for some reason other than an act of the accused. Where there is a mistrial, the jury has disagreed; it is obvious he should be tried again; jeopardy didn't attach. But suppose you had a case where the jury was impaneled and sworn; proceeded with the case; got up to the place where they were ready to submit the case to the jury; the prosecution felt, "Well, if I had a little more time, I could make a better case; I could get more witnesses"; and asks the court to dismiss the jury; and then they proceed later on to impanel another jury and try the case. Don't you think that man should be considered to be in jeopardy?

Colonel WIENER. Yes. You can't do it as a matter of convenience, but look at the sort of cases where the discharge of the jury has been held not to bar a second trial; where it appears in the course of a trial that the juror is acquainted with the defendant; or because one of the

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petit jurors was a member of the grand jury that returned the indictment; and where the appearance of prejudicial articles in the public press was thought to make a fair trial impossible; or where the trial judge was of the opinion that his own remarks had been prejudicial; or where a juror appeared to be insane after the commencement of the trial; or where the first jury was discharged because the defendant was not rearraigned after the overruling of his demurrer to the indictment.

In all of those cases, they have held he can be tried again.

Mr. ELSTON. You will find a lot of those are regulated by statute. For example, if an accused person becomes insane during the trial, the statute provides that proceedings may be taken to determine his then present mental state.

And most of the other matters to which you refer can be considered on error, after the case has been tried, and be appealed to a higher court.

Mr. BROOKS. Of course, you have the case, too, where some of the jurors in some jurisdictions take sick, and you have to make arrangements for another trial; or a case where, after a verdict is rendered, you find tampering with the jury.

Mr. DEGRAFFENRIED. You find cases where the allegation of the indictment is at variance. The proof might be at variance from the allegations of the indictment. For example, ownership might be laid in a person and when proof was introduced, ownership might be in another person; and even though the defendant had put in a plea of not guilty, and a witness for the State had been on the stand, they have held in those cases, the indictment can be corrected by placing the ownership in the proper place, and defendant can be tried over again because he hadn't been placed in jeopardy of that particular ownership charge.

Colonel WIENER. The real difficulty here which came up in one case I was arguing—I briefed it rather extensively and the court went off on another tack—is this: Suppose an accused is convicted in a civil court, and he appeals. The conviction is reinvestigated; he is tried again. He says, "You are trying me twice; you are placing me in jeopardy." The answer is always, "Well, you took the appeal and, therefore, you can't complain if you were successful and they try you again."

But in the military service, under old article 50½ in the 1920 Articles, and continued in article 50, the appeal is automatic. Does that mean that he is twice in jeopardy on a rehearing? I don't think it should mean that; but the Trono case, in 199 United States, is going to take a lot of talking to get around.

Mr. BROOKS. What would you think of language which would say something like this: No person shall be twice placed in jeopardy?

Colonel WIENER. Well, then, you are going to have an awful lot of litigation.

Mr. BROOKS. You go back to the decision there.

Colonel WIENER. Of what is jeopardy. I would leave the language as it is and concentrate on getting back to Mr. Justice Washington's views on what jeopardy in the fifth amendment means.

Mr. DEGRAFFENRIED. The language in broad terms and leave it to the court to construe.

Colonel WIENER. Use the language in the Articles of War since 1806.

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Mr. DEGRAFFENRIED. For example, one court might hold in a rape case, where force had to be proved, and the State was unable to prove force, that the man might later be indicted under carnal knowledge of a girl under 16, where no force had to be used, and tried over again, where he might have been acquitted under the rape charge. Everything except force was identical, and yet the court held he had not been in jeopardy.

Colonel WIENER. I think the notion here is sound. I think the article as it stands is satisfactory; but there are problems there.

Mr. SMART. I had just one more question. I would like for the committee to have the benefit of Colonel Wiener's view on the proposition of having JAG corps, which has been so extensively discussed by previous witnesses; what he thinks about it.

Mr. BROOKS. I wish you would remember this, if you will, and let us have your views on whether or not we should have some statement or some reference to the comity of the use of the Federal civil courts.

Colonel WIENER. You mean like article of war 74?

Mr. SMART. That is it.

Colonel Wiener. I don't recall whether there is such a provision, but I think it would be desirable to have a provision similar, if not identical, with article of war 74, as to who has precedence; and, of course, the basis of that, for the information of the members of the committee, is, basically, that in time of peace, the civil courts have or can exercise prior jurisdiction, if they want to, and not in time of war.

Now, as to the corps, a lot depends on what we mean by a corps. If we mean by a specialized branch of an armed service, such as the Judge Advocate General's corps, or the Medical Corps of the Army and Navy, I think it must be conceded that it is desirable to have such a separate corps.

At the same time, I am bound to say that the Navy, which, until recently, has had no specialization at all—they would train an officer to become Judge Advocate General by sending him to sea in command of a battleship—did produce in Admiral Kolklopp an extraordinarily able Judge Advocate General; and without making personal comparisons, which would be invidious, I will say, I do not know his superior.

He was a submariner originally. He commanded the submarines in the Pacific Fleet. Now, he has been a Judge Advocate General.

The Air Force now has a Judge Advocate General. They say that the first part of the Elston bill applies to them, which is perhaps not too clear; but they say the second part doesn't. Just how they reach that I don't know. Of course, the Air Force has always had a complex about a unitary organization. They tried during the war to do away with the signal insignia, an ordnance insignia, and so forth; so when you went up and saw someone in the propeller and wing, you didn't know whether he was a communications man, ordnance expert, or statistical officer.

They are operating under a set of articles which presupposes a separate Judge Advocate General's corps. I don't see how they can get away from a Judge Advocate General's corps. I think it is rather silly to say, when they get into the slate blue uniforms, if the fellow wears JA insignia, somehow he wouldn't be an Air Force officer.

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In the Navy, they now have a corps of officers for legal duties only. I think that is probably a step forward.

Now, the question is, how independent should this corps be? When I went down to Trinidad, just before I went down in April of 1941, I went to say good-by to General Gullian, who was then the Judge Advocate General. The commanding general for whom I was going to work was a Military Academy classmate of his, and very close personal friend. I went in to pay my respects and say good-by. I said, "General, I don't think I have to ask you what I should do as a judge advocate. I think I know that." I turned out to be optimistic; but then youth is always optimistic.

I said, "General, I would like to have you advise me on what I should not do."

And he said, "Always remember this: Your loyalty runs to your commanding general and not to me."

It seems to me that is pretty fundamental in any kind of military organization. It is one thing to provide separate channels for technical communications; and that is helpful. It is a very good thing to put into the law what article 47 of the Elston bill puts in, that the judge advocate shall have direct access to his commanding general, although I think it is a sad commentary on the resourcefulness of previous Judge Advocates General that they couldn't get that privilege for their offices by regulation or by exhortation.

But it is quite another thing to say that you are going to have a separate group of untouchables, with a separate command control. Now, true, a lawyer is a professional man. Of course, a lawyer's independent judgment is the only thing that is worth anything. But isn't that true of doctors? And yet, no one has ever suggested that the surgeon of the command be independent of the commanding general.

Let's turn to civilian life. The general counsel of a corporation, of a large corporation, the general counsel of a Government department, the Attorney General, the chief of each of those lawyers wants that lawyer's independent judgment; but I have never heard it said that the integrity of any Attorney General was impugned because he was subject to removal by the President when the President didn't care for his services any longer. It seems to me that is a most useful analogy.

Now, efficiency reports—I never had any trouble with my efficiency reports, whether I said yes to the old man or no. I discharged my responsibility when I gave him my opinion and my recommendation. He discharged his when he took it or turned it down. So that while it is desirable to have a separate corps, in the sense of a separate corps of specialists, Medical Corps, Civil Engineers Corps in the Navy, Chaplains' Corps, Signal Corps, Transportation Corps, they are still part of a team; and, as I say, it has never been suggested that if you have a good Attorney General, you had to make him independent of the President.

Now, as for separate promotion lists, it is a curious thing that the separate promotion list of the Judge Advocate General's Department of the Army used to be a very fighting subject. Why? Because in the Army, until very recently, all promotion was by senility. If the fellow ahead of you died or retired, then you got promoted; it didn't make any difference what your merits or demerits were. You got promoted when he died.

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The medicos, including the horse doctors, got promoted on length of service. There was a considerable basis for saying, "Why doesn't the Army promote its lawyers as fast as it does its horse doctors?"

Time went on. More promotion by length of service was introduced through the 1940 act; and finally in 1947, after the Elston bill passed the House, the Officer Personnel Act came in, and after that, all promotion in all branches was by selection.

When those provisions of the Elston bill became law after the Officer Personnel Act of 1947, with a separate list, which was that great emotional goal toward which all judge advocates were striving, it doesn't give any judge advocate officer any faster promotion than he would have had when the bill went into effect.

Another thing the Elston bill does, curiously enough, is this: As a result of the provision of the Officer Personnel Act of 1947, the Secretary of the Army can go outside the regular service if he deems it necessary or desirable to get a chief of a branch of any department of the Army. During the war, as you gentlemen doubtless recall, that was actually done through juggling of positions, and so forth, in the case of the Finance Department. The Fiscal Director during the war was a Reserve officer. The Chief of Finance sold war bonds.

The last four sections of the Elston bill, passed after the Officer Personnel Act went into effect, makes the Judge Advocate General's corps of the Army the only branch of the Army where the Secretary of War and the President aren't free, if necessary, to go outside the Regular ranks to find a branch chief.

Mr. BROOKS. Are there any further questions?

Mr. SMART. No.

Mr. ELSTON. No.

Mr. BROOKS. If there are no further questions, Colonel, we really thank you very kindly for all of the help you have given the committee. I think you have shown a keen insight into the whole problem. We appreciate it very much.

Colonel WIENER. Thank you, sir.

Mr. BROOKS. We have this morning Congressman Denton, of Indiana, who wants to testify regarding certain features of the bill.

Congressman, we are very happy to have you here this morning, and glad to have your statement.

STATEMENT OF HON. WINFIELD K. DENTON, MEMBER OF CONGRESS FROM THE EIGHTH DISTRICT OF INDIANA

Mr. DENTON. My name is Congressman Denton, from the Eighth District of Indiana. I am appearing in behalf, as you state, of certain provisions which I would like to see added to this H. R. 2498.

Now, briefly, what I want is this: I want to see the Air Corps Judge Advocate's office made a separate corps. As this committee knows, when they amended the Articles of War, they made the Judge Advocate of the Army a separate corps. Then when you set up the Air Judge Advocate's office, I assumed—and most everyone else did—that it would also be a separate corps in the Air Corps; but, apparently, from the way they have construed this matter, it is not operating as a separate corps.

I might say that I was a Judge Advocate in the last war; and I was assigned to the Air Corps. A great many Reserve Air Corps officers

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are very disturbed about this feature; and it is working out especially bad for a number of reasons.

In the first place, the Judge Advocate in the Army is a separate corps. Now, that makes it easy for them to get lawyers. The lawyers can go into a branch where they are sure that their training and their ability will be used in accordance with what they have been trained to do, and they go into the Army Judge Advocate's office. On the other hand, in the Air Corps, when a man goes into the Judge Advocate's office in the Air Corps, he is subject to being assigned to any other duty within the Air Force. It is especially acute in the Air Force.

I think I can say this because I was a rated officer in World War I. There is some feeling in the Air Force between flying officers and nonflying officers. The flying officers have certain prerogatives; they have to command installations, and an officer in command of anything must be a flying officer. Now, that puts a nonflying officer in somewhat of an inferior status; and a man doesn't like to go into the Judge Advocate's office of the Army and being in what I might say is an inferior status.

Now, the second point I want to make about it is, if any man ought to be free to give an unbiased opinion, it ought to be a lawyer. I say this from experience I have had myself, as long as a judge advocate has to rely on his commanding officer for his efficiency rating, for his promotion, and a number of other things, if he is under that command and not a separate corps, he is not free to give his opinion as he should do. He is both a judge and an advocate. That is one man and that is one branch of the service that I think certainly should be free.

Now, a third point I want to make is this: This, just from what I have heard of it, is a very good code, in the changes that were made. You can write the finest law in the world, and if it is poorly administered, it is a bad law; and you can write a bad law, and if it is administered well, it is a pretty fair law.

Now, the administration of the military justice is up to the judge advocate. We know in the last war, there were a great many abuses, injustices committed; and I think in this case, if you want to have military justice administered effectively and efficiently, you must have the judge advocate a free agent to give advice just as any other lawyer would. I imagine you men are most all lawyers, and you know, as lawyers, we must be free to give our own opinion. A lawyer is trained, has special knowledge of the law in long years of training; he is familiar with administration of justice. He knows there are certain rules of procedure and certain practices that have to be followed and he must be free, if we are going to have the right kind of justice that we want, to give that advice as he should give it.

Now, I think if we have a separate judge advocate for the Army, we certainly ought to have a separate judge advocate for the Air Corps.

Mr. BROOKS. Don't you think all three services ought to have it?

Mr. DENTON. I think they should. I know very little about the Navy, so I am not talking about it. I do know about the Army and the Air Corps. I think it should be a separate service. We know the doctors are a separate corps; we know the chaplains are a separate corps. I think the Inspector General of the Army operates as a separate corps.

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If anything be done, what I recommend would be that a new section be added to this bill which would provide that the provisions of title II of the act of June 24, 1948, that was Public Law 759, shall be construed as within the laws made applicable to the Department of the Army by section 2 of the act of June 25, 1945. That is, you would have a new section. You don't need that for the Army, because you already have it for them. Personally, I would think the same rule would apply to the Navy, although I don't know much about the Navy and I couldn't speak about it.

I know a number of men who served as judge advocates in the Air Corps in the last war who are very anxious to see what I think is an improvement made to the military justice procedure.

Mr. BROOKS. Congressman, do you think it would be better to have three corps than to have unification?

Mr. DENTON. You mean unification of all of them?

Mr. BROOKS. Yes.

Mr. DENTON. Well, I am not prepared to give an opinion on that, because I don't know. Of course, I favor unification as far as you can go, as far as you can have it; but I certainly think that the Air Judge Advocate should be a separate corps, just the same as the Army is. I would like to see unification all the way down the line, of course.

Mr. BROOKS. Mr. Elston?

Mr. ELSTON. No questions.

Mr. BROOKS. Mr. Hardy.

Mr. HARDY. I have nothing.

Mr. BROOKS. Mr. deGraffenried?

Mr. DEGRAFFENRIED. Nothing.

Mr. BROOKS. We certainly thank you very much for your fine remarks. We appreciate it.

Mr. BROOKS. Mr. Robert L'Heureux. Will you just have a seat Mr. L'Heureux?

Mr. SMART. I might say to the chairman that Congressman Ford has requested that he be heard; and he will be here at 15 minutes before 12; and I have so advised the witness.

Mr. BROOKS. Mr. L'Heureux, would you mind giving, for the record, some of your background before you begin with your statement?

STATEMENT OF ROBERT D. L'HEUREUX, CHIEF COUNSEL, SENATE BANKING AND CURRENCY COMMITTEE

Mr. L'HEUREUX. Yes, sir. I will be very brief on that point. With your permission I will file in the record the letter that I sent you on March 4, 1949, which gives it at length.

Mr. BROOKS. If there is no objection, it is so ordered.

(The letter referred to follows:)

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
March 4, 1949.

Hon. OVERTON BROOKS,
Chairman, Subcommittee No. 1, House Armed Services Committee,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN BROOKS: Pursuant to a recent conversation which I had with my good friend, Robert E. Jones, Jr., of Alabama, I wish to confirm that I have been invited to appear as a witness upon H. R. 2498 pertaining to a uniform code of military justice.

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In order to give you and the subcommittee an idea of my background, I am furnishing you with the following information.

I am 36 years of age. I have been granted the following college degrees: A. B., A. M., Litt. B., LL. B., LL. M. I am a member of the Bar of the District of Columbia and of the State of New Hampshire. I have taught constitutional law, criminal law, and statutory law in a law school approved by the American Bar Association for about 5 years. I have practiced law since 1940 with the exception of my military service (1943–46). I was a machine gunner in the Thirtieth Infantry Division and I was wounded in combat with the enemy (January 1945) in Malmedy, Belgium.

Throughout my military service, I was consulted on legal problems in connection with courts-martial. In 1945 and 1946, I served successively as assistant judge advocate, reviewing courts-martial, defense counsel, and trial judge advocate in Marseille and in Paris, France. At that time, Marseille was a redeployment center processing troops for the Asiatic-Pacific theater of war and for return to the United States. Naturally, the volume of general courts-martial work was heavy in that post, and I acquired considerable experience in the prosecution of all types of crimes ranging from murder to extensive black market activities. I was honorably separated from the service on May 17, 1946. I then resumed the practice and teaching of law. In January 1947 I was appointed chief counsel of the Senate Banking and Currency Committee and I have been a member of the professional staff of that committee from that time to the present.

I greatly favor a uniform code of military justice for all the services. I have acquainted myself with the provisions of H. R. 2498 and I would like to offer constructive criticism of some of its provisions in order to improve the legislation. I estimate that I would need at least 1 hour to cover important points, although I would be willing to spend more time with the subcommittee if its members find that I can be of further assistance to them.

Although I am a member of the American Bar Association and of the bars of the District of Columbia and of New Hampshire, I do not appear as a representative of those groups. I appear simply as one experienced with military, civil, and criminal law to offer constructive improvements to the bill.

In that capacity, I believe I could render a more useful service if I were to follow as closely as possible the proponents of the measure on the list of witnesses. If that were done, the members of the subcommittee would have the opportunity to question prior and subsequent witnesses, at an early stage in the legislative process, upon the advisability of the suggestions I will offer.

Would you kindly advise me of the day and time of my scheduled appearance as a witness?

I thank you for your courtesy in offering me this opportunity to do my bit for a better administration of military justice.

Sincerely yours,

ROBERT D. L'HEUREUX.

Mr. L'HEUREUX. I have five college degrees; I have been teaching law, criminal law, constitutional law, and statutes for about 5 years. I am chief counsel for the Senate Banking and Currency Committee.

I have had experience in the Army, mostly as a machine gunner, a combat man in the Army; I got wounded in Malmedy, Belgium, as a combat man.

I never, on my own, applied for a commission. However, toward the end of the war, the commanding officer who needed men for trial judge advocate work, asked me to apply for a commission; and I got it the same day or the next day; and they put me right into court-martial work. I wound up in Marseilles, France, which, as you know, is the gangster land in France. We had a half million troops going through there at all times. We had a record of trying as many as nine murders a week. We had everything from rape to extensive black market activities. One soldier, who had 35 trucks stolen from the Government, and who conducted a great black market activity. We tried all these cases.

In other words, I have had quite a bit of experience both in civil-criminal law and military-criminal law.

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Senator Charles W. Tobey of New Hampshire has asked me to state that he is very much interested in this also and that I generally represent his views in this matter. I have only about 15 minutes. I have given you my views in my paper section by section. I will omit the first part where I speak on the general policy; and I will try to take up some of the more important points I have made here. I would suggest on these points, I was very glad to hear the chairman and Mr. Elston remark that there should be somebody here from the three services to go over this point by point and take up the objections made by the witnesses. I think that is an excellent idea. I would suggest that you have the Judge Advocate General in the three branches, the Air Corps, the Navy, and the Army, either come himself or appoint someone from the Judge Advocate's Office who understands these technical questions of law. I am sure they could be very helpful.

I will take them point by point without reading the sections because I don't have time. However, you are familiar with them.

I will first take article 1, subsection 11.

In an attempt to combine in one definition the situations of an accuser or a prosecutor taking part in convening the court or acting as a member of the court martial, the draftsmen of H. R. 2498 have omitted the commanding officer who orders the subordinate to prefer charges.

That is covered in the present manual for court martial. He could not sit as a member of the court, and he could not convene the court. On the other hand, the way they have defined the terms in this bill, that leaves him out. The present manual for courts martial states, regardless of the question of personal bias, if he orders a lower officer, a subordinate, to prefer the charges, he should not sit on the court and he should not convene court.

I pass to article 2, page 4, line 20, which speaks of Reserve personnel who are voluntarily on inactive-duty training authorized by written orders.

That has been covered, in part, by Colonel Wiener, very well indeed; so I will just talk on a few points.

It could conceivably include Reserve personnel voluntarily on inactive duty, meeting once a month for a lecture, and so forth, and such personnel talking back to someone his superior. I am sure you will want to think over that change in the law.

Article 2, page 5, line 3:

> Retired personnel of a Reserve component who are receiving hospital benefits from an armed force.

If that provision is intended to apply to one who is actually in the hospital for treatment, that is not unreasonable; one who is hospitalized, as the term is used, for a day or several days in a hospital bed, or around, you want to make military law applicable to him.

On the other hand, if it applies, as it very well could with the present language, to those who come into the hospital and then leave, or an "out-patient," as he is known, that is quite drastic.

So I say "hospital benefits" could be replaced by the word "hospitalized," which has a very definite meaning.

Article 2, section (8):

> Personnel of the Coast and Geodetic Survey, Public Health Service, and other organizations when serving with the armed forces of the United States.

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Under present law, personnel of the Geodetic Survey when serving with the Army come under military law under 33 U. S. C. 855.

The Public Health Service comes under military law under 42 U. S. C. 20.

Both come under military law in time of war only under present law.

The bill continues with the words "and other organizations when serving with the armed forces of the United States." Under this provision of H. R. 2498, the Red Cross in time of peace or war; the U. S. O. hostesses in time of peace; even the Boy Scouts of America when serving with the armed forces, say, for disaster relief within the continental United States; even guards in the Pentagon, could be made subject to court martial.

I am sure you want to restrict that a little and make the words a little less all-inclusive.

Article 2, section 12; that is page 5, line 22.

This provision bears upon subject matter partly provided for in 34 U. S. 1201, but it is applicable in time of peace as well as war.

Thirty-four, United States 1201, provides, in part that persons in leased bases under the Secretary of the Navy, in time of war or military emergency, are subject to military jurisdiction for offenses except those purely military or naval. That is simply declaratory of the law of war, a part of long-established international law.

In contrast to that, article 2, section 12, has no limitation whatever and would make natives or visitors subject to military law. That could possibly create serious international complications. I am sure that the full exercise of this authority would violate a large number of or all existing executive agreements in connection with leased bases. That is contrary to international law. Local civilian courts are supposed to function when peace is restored.

Let's not confuse this subject with our courts, say, in Germany. We have two branches of military law. You have martial law and the law of occupation, the law of war. Under the law of occupation, they have the right to try by court martial. They also have the right to establish or create a military tribunal to try offenses when they are the occupied force. On the other hand, this bill provides in leased bases, where we usually have agreement with the people, and they are presumably friendly people—you should not regard that lease agreements, independent agreements, make these civilians subject to military law for military offenses.

I am sure the State Department would give you their views on that matter. They must have definite views on that matter.

Article 3 (a), page 6, line 5—I hate to go this rapidly, but you understand I have only 20 minutes.

Mr. BROOKS. Go right ahead.

Mr. L'HEUREUX. When you bear in mind how military jurisdiction has been extended under this article 2, and now you add this continuing jurisdiction over such personnel and offenses, you have a constant threat of military discipline hanging over Reserve personnel.

I would suggest that you leave it as at present in A. W. 94, extending jurisdiction only to frauds against the Government. Even that is of doubtful constitutionality. From what I recall, it was tried in lower Federal courts, one district deciding one way, and another district deciding the other way; with some reference to it in the Hurtz-

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berg case, but no clear-out definition as to whether it is constitutional to extend military jurisdiction even under the present Articles of War to fraud against the Government. It is an offense you will want to look into.

Article 3, section 2, in this bill, continues jurisdiction for any kind of offense as to Reserve personnel, but not as to United States personnel, nor as to National Guard personnel. In the past, of course, they have been considered as civilians with reference to this particular offense.

When you tie article 2, extending military jurisdiction, to article 3 (a), you really get an abortion. You find they can extend jurisdiction; call them back into the service; try them, and so forth; and it is a great departure from present law.

Article 9 (c), page 10, line 22: The procedure is too cumbersome. This provision should be amended to allow an MP to deliver an order of the commanding officer whether the MP be an officer or not. In other words, you should not disturb present law. I think they are going out a little far. It is a question of enforcement mostly, and I am sure you will want to look up that one.

Article 12, prohibiting confinement with enemy prisoners, and article 13, prohibiting punishment before trial, are more specific than, and constitute a great improvement over, present article of war 16, which is full of questions and ambiguities. Article of war 16 states aliens "not in same jail house or other form of segregation."

Let me say that this is about the only respect in which this bill can be considered at all an improvement over the Elston bill. The Elston bill, to me, was a great advance in military law.

I don't see anything that can be done to improve it from the point of view of the Army or the Navy and to the present status. There are certain matters of opinion as to whether you should allow an appeal, for instance, to a court on questions of law and fact; but I don't think the Members of Congress generally would be in a mood today to even consider that.

I mean, from the practical viewpoint, the Elston bill does a great job. I think when they tried to unite the three services, if they had tried to unite them all under the principles of the Elston bill, you would really have a great piece of work here. On the other hand, they haven't done that, as we will see in these others, as to company punishment, and all.

Where there is a choice of giving bread and water confinement for 5 days, which has worked possibly in the Navy, to one not in the Navy, like myself, it always seems like a form of cruel and unusual punishment. There may be reasons for having it. There should be specified in the bill, if you allow it, that the head of the department in the Navy can have that, but not give the head of each department the authority to put it into effect as to soldiers. I think the test should be, if you have found in the Army where the larger number of draftees go during the war, that it has worked well—and I have heard no criticism that company punishment has not worked well in the Army—if it has worked well with the limited punishment that there is now, why make it arbitrary within the discretion of the department to add to that punishment? If anything, if you want to unite them, restrict it in the Navy rather than extend the severity of the punishment or add to the severity of the punishment in the Army.

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I will have to skip over a lot of these points, but I am sure your staff experts here will go through them and you, yourself, may find time to do that and check them as against the bill.

Mr. ELSTON. They are all included in the statement?

Mr. L'HEUREUX. Yes.

Mr. BROOKS. The committee will go over them carefully; you can depend on that.

Mr. L'HEUREUX. Thank you, sir.

Next we have article 14, page 12, line 20.

Under article of war 74, it is mandatory in time of peace for military authorities to hand over to the civilian authorities a man who is charged by civilian authorities except if the accused is being held by the Army for a military offense.

This article 14 in the bill makes it discretionary with the Secretary of the Department to issue regulations allowing him to be given up to civilian authorities or not, regardless of whether he is charged with a military offense. I believe this is illogical. The accused should be given up to the civilian authorities. States will feel better about this. I understand the Navy has used that; and they haven't abused it. It doesn't mean a lot of greenhorn men, as I was, myself, stepping down from a chair in a university and winding up as a private, should be given a responsibility in a short time to decide whether to give him up to a State or not. I might do it well and I might not. Instead of being myself, it might be a blacksmith or someone who has been called in and become an officer, and might have that decision to make—whether to give him up to the civilian authorities or not.

I think the present system, as under the Elston bill, is preferable.

Article 15, page 13, line 9: That is your company punishment which I touched upon in part.

Article 17 (b), page 16, line 20: Let us say you have two accused. One will go up in the Army; the other in the Navy. The Army thinks it is a good case; the Navy will say "No." If you have a case where two are being tried for conspiracy, for instance, and the Army says, "No, it isn't a good conviction"; and the Navy says, "Yes"; the other one who has been found guilty and his case approved, will have to be set aside because you can't commit conspiracy alone.

You may have all sorts of ambiguities and obscurities from that; and I think you should look at that closely.

I will skip over a lot of these points. I would like to come to the substantive articles as to crimes, because I think those are very important; and from the civilian lawyer's viewpoint, I can discuss those with a little more authority than the military.

Mr. BROOKS. You mean the definitions of crime?

Mr. L'HEUREUX. Yes, sir.

Mr. BROOKS. Article 77; isn't that the punitive article?

Mr. L'HEUREUX. Oh, yes, article 77, page 65, line 1.

First, it is just a question of phraseology:

> Any person punishable under this code who commits an offense punishable by this code.

That is kind of begging the question. I think they meant, "any person subject to this code."

That isn't important.

Article 88, page 69, line 21: Disrespect toward officials.

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The present law applies to enlisted men alone. Under this provision, only an officer may be punished for using contemptuous or disrespectful words against the President, Vice President, Congress, and so forth. It is all right by me, but why the distinction between officers and enlisted men. You probably will want to make it uniform as under the present bill.

Article 91, subsection 2, page 71, line 2: A warrant officer who willfully disobeys the lawful order of a noncommissioned officer—you will find that there. The whole thing treats of a disrespect toward a subordinate; and I am convinced that whoever drew up this bill did not belong to the Air Corps or Army. I am convinced of that, because he would have caught it right away. A warrant officer is superior to a noncom. That is page 71.

If you have someone from the JAG office of the three services present, they will catch all these points.

We come to Article of war 118, page 80, line 8. The present article of war 98 deals with murder. The Manual for Court-Martial 1949, paragraph 179, gives a simple definition of murder which is substantially the same as the one used in the Manual for Courts-Martial 1928; and it is substantially the definition used throughout the various State courts and the Federal courts.

Murder, with all its ramifications, has a definite meaning both under Federal law and under military law. While commending the draftsman of H. R. 2498 for an attempt at simplification, we find here an instance of the grave danger of glibly modifying the old common-law definitions to dispense with procedural difficulties. I don't think they reached the result that they sought to achieve here.

Under this provision, a killing in the perpetration of simple arson, housebreaking, would not be murder. That has been, I am sure through mistake, left out.

This provision also removes the common law "year-and-a-day rule," which even the States have not set the pattern for. Very few States have tried to tamper with that. It is quite a question of proof as to whether the man died of that offense after a year and a day.

Article 119, page 80, line 23: Manslaughter. Voluntary manslaughter is usually defined as the intentional, unlawful killing of a human being without malice aforethought. This article does away with voluntary manslaughter by defining manslaughter too narrowly as follows:

> Any person subject to this code who, without design to effect death, kills a human being—

The result is obviously not intentional, because the article goes on to say:

> (1) In the heat of sudden passion.

Even if that still included voluntary manslaughter, because "heat of sudden passion" is not limited to the case when it is based upon "adequate provocation," it is still lacking in precision. This provision is lacking in essential respects and should be redrafted with a view to defining voluntary manslaughter also.

You will find that voluntary manslaughter doesn't come under that. We all know what that is: A man walks in, finds his wife in the arms of another man. Both Federal law and the common law

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traditionally makes that voluntary manslaughter. This case hasn't been taken care of in this article.

Article 121, page 81, line 16: Larceny. Three offenses, larceny, embezzlement, and obtaining goods or money under false pretenses are now to be termed larceny. However, essential element in all three crimes, the intent to deprive the owner permanently of his property, has been omitted. That article should, by all means, be redrafted. It could, conceivably, be held that a man who borrowed another man's shirt, and intended to return it, and he can prove it, would be proved guilty of larceny. It isn't quite specific enough.

Article 122, page 82, line 3: It is an unprecedented extension of robbery to make fear of injury to property, particularly the property of a relative, an element of robbery. That is further than the great majority of States would even think of changing their law, that you would hold it to be robbery if she says, "Unless you come across with your property, I am going to take care of the property of a relative of yours." That has never been the law. It is impossible to say what sort of property is contemplated. This article is phrased too loosely.

Article 126 (b), page 83, line 25: Simple arson. That takes in property. What kind of property? It could conceivably take in hotfoot, lighting fire, providing there would be a scorching of the shoe. It could come under arson. I am sure that the draftsmen of this legislation didn't intend that; but it should be phrased less loosely.

Article 140, page 93, line 9: Delegation by the President. The President may delegate all his authority, such as approval of death sentences, dismissal of officers without a trial—just any power. He may delegate it to anyone he chooses; and the latter may redelegate, perhaps all the way down to the appointing authority. This goes far beyond the First War Powers Act.

Secretary Forrestal's committee cited Public Law 759, Eightieth Congress, as a precedent. That was not a fair statement. Public Law 759, Eightieth Congress, second session, section 10 (c), June 24, 1948. Title I of that law, which deals with the organization for setting up the draft, contains a similar "delegation clause" but that clause is not in title II, which amended the Articles of War.

That is an entirely different thing, allowing the President to redelegate his authority in selection of personnel of drafts, an entirely different thing from giving him that delegation to redelegate the power of approving the death sentence probably all the way down to the convening authority. There is no limit as to where it stops; it is a dangerous thing.

Do I have more time?

Mr. SMART. The Congressman is here.

Mr. L'HEUREUX. I will leave this with you. As you know, I am with the Senate Banking and Currency Committee. If I can be of any help to the committee and staff, in explaining these things, I will be glad to do it, because I have a very keen interest in the military. I have lived as a GI, as I told you, a combat man; I have lived as an officer; I know their problems; and I want to do all I can, while upholding the military discipline.

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Mr. BROOKS. Mr. L'Heureux, the committee is glad to have this information and your ideas; and I suggest, if you will, to keep in touch with Mr. Smart. We will read your statement very carefully.

Mr. L'HEUREUX. Yes, sir.

Mr. BROOKS. Perhaps later on we will ask Mr. Smart to contact you about some of the ideas you have here.

Mr. L'HEUREUX. I thank you very much for your courtesy, all of you. I would appreciate it if you would let my whole statement and summary of it go into the record; also a short statement put in the Congressional Record touching on a few of these points by someone formerly in the JAG.

Mr. BROOKS. No objection, so ordered.

(The statements referred to are as follows:)

TESTIMONY OF ROBERT D. L'HEUREUX BEFORE A SUBCOMMITTEE OF THE ARMED SERVICES COMMITTEE OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

Armies are established primarily to wage and win wars. None of us would want to interfere in the slightest degree with the discipline required by our armed services to attain that objective. However, armies are composed of human beings made to the image of God, not of mere machines, and the enforcement of discipline cannot be had at the price of a sacrifice of justice.

If your code of military justice is unjust, you will not have discipline, you will invite bitter resentment with which esprit de corps is impossible, you will incite characters who would never have become criminals in civilian life to become felons in the service. That, all of us wish to avoid.

I have read with interest the press release dated February 7, 1949, from the National Military Establishment, Office of Secretary of Defense. That press release states in part:

"Secretary Forrestal asked the committee, appointed last August * * * to prepare a code, uniform in substance and in interpretation and application, that would protect the rights of those subject to it and increase public confidence in military justice without impairing performance of military functions."

The announced objectives could not be improved upon. However, H. R. 2498 falls far short of those objectives. Consider that this bill deprives enlisted men of the Army, for instance, of several important rights which they have enjoyed traditionally or which have been granted to them by the last Congress, without any proof that the enjoyment of these rights have been detrimental to discipline.

Realize that this bill reaches deeply into the civilian ranks to extend the court-martial powers of the armed services to civilians even in peacetime such as Red Cross workers, USO hostesses, and even civilian guards at the Pentagon, when the civilian courts are open daily for business,

Then ponder over the other drastic changes that are included in "sleepers" in the bill, and you will wonder whether a real attempt was made to adhere to the announced objectives or whether this is a disguised, either deliberate or unconscious thirst for additional, arbitrary, military power run riot. I shall proceed with an analysis of the bill.

H. R. 2498, EIGHTY-FIRST CONGRESS

Article 1 (11) (p. 3, line 23) [read definition]: See articles 22 (b) (p. 20, line 7) and 25 (d) (2) (p. 23, line 15) for application of this definition.

In an attempt to combine in one definition the situations of an accuser or a prosecutor taking part in convening the court or acting as a member of the court martial, the draftsmen of H. R. 2498 have omitted the commanding officer who orders the subordinate to prefer charges.

Under present law, by the Manual for Courts Martial, such commanding officer is an accuser and cannot appoint a court martial or sit as a member of the court.

Under article 1 (11) of H. R. 2498, such commanding officer could do either.

Under Articles of War 8, 9, 10, he couldn't appoint a court martial.

Under Articles of War 4, he couldn't sit as a member of the court.

The reason for this prohibition is obvious. The one convening and appointing the court or a member of the court should be unbiased and if the commanding

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officer orders the subordinate to prefer charges, he has formed more or less views upon the guilt or innocence of the accused.

This change from present procedure should not be made. Anything that is apt to detract from the accused getting a fair, impartial trial is to be carefully avoided. There is no evidence that present procedure is detrimental to Army efficiency.

Article 2 reaches deep into the civilian population. V. g. article 2 (3) (p. 4, line 20) "Reserve personnel who are voluntarily on inactive duty training authorized by written orders": The draftsmen of this provision undoubtedly contemplated some particular type of duty such as "week-end flights." However, the provision is so loosely drawn, that it could include a situation where drill or other duties are provided for by written orders (especially since retirement credit and pay may be involved).

As drawn, it could conceivably include Reserve personnel voluntarily on inactive duty meeting once a month for a lecture, etc. and such personnel "talking back" to someone his superior.

I can't believe the draftsmen of this legislation intended to produce this result.

The bill should be amended to embrace clearly only those situations which were meant to be covered by this provision. If the provision was purposely drawn in a loose form, the members of this subcommittee should ponder deeply before recommending enactment of such a sweeping provision.

Article 2 (5) (p. 5, line 3), "Retired personnel of a Reserve component who are receiving hospital benefits from an armed force": If that provision is intended to apply to one who is actually in the hospital for treatment, that is not unreasonable. However, if it applies to out-patients (those who just come into the hospital for a treatment and then leave) the provision is quite drastic. Such a person could be court-martialed for simply "talking back" to a medical officer.

I would suggest that the words "receiving hospital benefits from an armed force," on page 5, line 4 be stricken from the bill and the words "hospitalized by an armed force" be substituted in lieu thereof.

The words "hospital benefits" are too broad and indefinite. The word "hospitalized" has a definite meaning.

Article 2 (8) (p. 5, line 9), "Personnel of the Coast and Geodetic Survey, Public Health Service, and other organizations when serving with the armed forces of the United States": Under present law, personnel of the Geodetic Survey when serving with the Army come under military law under 33 United States Code 855.

The Public Health Service comes under military law under 42 United States Code 20.

Both come under military law in time of war only under present law.

The bill continues with the words "and other organizations, when serving with the armed forces of the United States."

Under this provision of H. R. 2498, the Red Cross in time of peace or war, the USO hostesses in time of peace, even the Boy Scouts of America when serving with the armed forces, say for disaster relief within the continental United States, even guards in the Pentagon could be made subject to court martial.

The drafters of this bill may contend that under the rule of interpretation called ejusdem generis, the provision applies only to other organizations similar to the Geodetic Survey and Public Health Service, but such important things should not be left to the elastic and often ephemeral rule of ejusdem generis. The rule is of uncertain application and has often been ignored by the courts.

Article 2 (12) (p. 5, line 22) [read the provision]: This provision bears upon subject matter partly provided for in 34 United States 1201, but it is applicable in time of peace as well as war.

34 U. S. 1201 provides, in part, that persons in leased bases under the Secretary of the Navy in time of war or military emergency are subject to military jurisdiction for offenses except those purely military or naval. That is simply declaratory of the law of war, a part of long-established international law.

In contrast to that, article 2 (12) has no limitation whatever and would make natives or visitors subject to military law. That could possibly create serious international complications. I am sure that the full exercise of this authority would violate a large number of or all existing executive agreements in connection with leased bases. That is contrary to international law. Local civilian courts are supposed to function when peace is restored.

Article 3 (a) (p. 6, line 5) [read provision]: When you bear in mind how military jurisdiction has been extended under article 2 and now you add this continuing

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jurisdiction over such personnel and offenses, you have a constant threat of military discipline hanging over Reserve personnel.

You'll want to think this one over seriously, gentlemen, before you recommend its enactment. You will want to limit it narrowly to prevent only obvious miscarriages of justice.

Continuing jurisdiction after separation has been extended, in the past, only under A. W. 94 pertaining to frauds against the Government to protect Government property.

Article 3 (a) in this bill continues jurisdiction for any kind of offense as to Reserve personnel, but not as to a United States personnel, nor to National Guard personnel. This will not make Reserve personnel any too happy. In the past, Reserve personnel of the Army were regarded as civilians only subject to military law when on active duty.

When you tie in article 2 (extending military jurisdiction) to article 3 (a), you really get an "abortion."

Great constitutional doubt exists as to these provisions, because of the fifth amendment to the Constitution of the United States which provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces;"

If a fellow commits an offense in the service and is discharged subsequently from the service, does the case arise when the offense is committed or when the prosecution is instituted? He is no longer in the service. Undoubtedly the framers of the Constitution knew the difference between a case and a "cause" (which expression they didn't use).

Article 9 (c) (p. 10, line 22) [read provision]: The procedure is too cumbersome. This provision should be amended to allow an MP to deliver an order of the commanding officer whether the MP be an officer or not.

That is allowed now under paragraph 20 of Manual for Courts Martial.

(The drafters of 9 (c) apparently did not consider the fact that a dishonorably discharged paroled prisoner or trustee is a civilian and an officer would have to deliver the order.)

Article 12 (prohibiting confinement with enemy prisoners) and article 13 (prohibiting punishment before trial) are more specific than and constitute a great improvement over present A. W. 16 which is full of questions and ambiguities. V. g. A. W. 16 states aliens "not in same jail house or other form of segregation." How about alien in the service? Must he be separate? This article removes most ambiguities in A. W. 16.

Article 14 (p. 12, line 20) [read full article]: Under A. W. 74 it is mandatory in time of peace for military authorities to hand over to the civilian authorities a man who is charged by civilian authorities except if the accused is being held by the Army for a military offense.

This article 14 in the bill makes it discretionary with the Secretary of the Department to issue regulations allowing him to be given up to civilian authorities or not, regardless of whether he is charged with a military offense.

Illogical. Should be given up to civilian authorities. States will feel bitter about this. It may have worked well under the Navy, but why leave it to military discretion?

Article 15 (p. 13, line 9). (See article 20, infra.) Refer to subject matter of provision.

Under the present A. W. 104, the commanding officer may impose against enlisted men (including noncoms) of his command minor punishment such as withholding of privilege for 1 week, restriction to certain specific limits for 1 week. The punishment may not include confinement.

Below grade of noncom (private and private first class), extra fatigue or hard labor without confinement for 1 week and that is all.

If they (the accused) consider themselves innocent, they have the right to demand trial by court martial in lieu of company punishment, and they cannot be punished.

With respect to officers: An officer exercising general court-martial jurisdiction may in connection with reprimands, etc. impose one-half of 1 month's pay for 3 months in time of peace and war up to but not including a brigadier general.

Article 15 of this bill includes all that A. W. 104 does, except that the accused has no right to demand a court martial, unless the Secretary of a Department allows it by regulation.

In addition to that, they include as possible punishment—

1. reduction to next inferior grade, or
2. confinement for 7 days, or

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3. confinement on bread and water or diminished rations for 5 days, or
4. forfeiture of one-half month's pay
5. withholding of privileges for 2 weeks, or
6. restriction to specified limits for 2 weeks, etc.

That is a thirst for arbitrary power run riot. Oh, I know that the Navy has had something like this for years and years (it may work in the Navy with voluntarily enlisted personnel—tradition, etc.) but let us not forget that our wars are fought and won with draftees in our age. Tradition has less meaning for them. They are civilians at heart. They'll resent arbitrary power in the company commander. What disciplinary power the company commander has now is already a cause for complaints, but the accused can demand a court martial.

You can't do that to your boys in the service. If you do, you'll never feel right in your hearts about it.

I have never heard of evil effects upon discipline flowing from the present system in the Army. Why give a mere man such arbitrary power?

Article 15 (c) (p. 15, line 4): Compare this with article 17 (summary courts which give any accused except one who has been "permitted" to refuse company punishment the right to demand trial by a general or special court martial).

Article 17 (b) (p. 16, line 20) [read provision].

Let us say you have two accused (one Army and one Navy man) being tried together for an offense. The Army man's case will go up through channels in the Army and let us say, the Army says it's a good conviction.

The other's case goes up through Navy channels, which has slightly different precedents and traditions, and the Navy says the case is no good.

That will not make for much logic.

Let us say that the two are being tried for a conspiracy and both are found guilty. The case goes up to the Army for departmental review, and it is upheld. The other goes through Navy channels and is "busted." The Army man's case will have to be "busted" too, because he can't commit conspiracy alone.

You'll have all kinds of inconsistencies and absurdities.

The appellate review should be lodged in the service which tried the case.

Article 18 (p. 17, line 5) [read p. 17, line 10]: "General courts martial, etc. * * *"

Present A. W. 12 stops with "military tribunal" (on line 12). Art. 18 adds the words: "and may adjudge any punishment permitted by the law of war."

What is the law of war? Difficult to say. You have to be an expert on international law. V. g. dropping prisoners out of planes as punishment in recrimination?

Article 20 (p. 18, line 5), jurisdiction of summary courts martial: May adjudge only two-thirds of 1 month's pay, while company punishment can consist of one-half month's pay.

Those two provisions must have been written by two different persons at two different times.

Still, enlisted men (including noncoms) may demand a special court martial (and may be given special or general court martial whichever appropriate).

Why the distinction with article 15?

N. B. Under present Army procedure the two higher grades of noncoms only have the absolute right to demand a special court martial instead of a summary. Other noncoms may request. Those below grade of noncom must take it.

Article 22 (b) (p. 20, line 7), article 23 (p. 20, line 11), and article 24 (p. 20, line 2): Same objection as to accuser, and so forth referred to at the beginning of my testimony on article 1 (11).

Article 25 (c) (p. 22, line 14) [read A. W. 4]: The language is different. P. 23, lines 1 and 2 unless "on account of physical conditions or military exigencies."

Too broad.

The appointing authority may deprive the accused of his right by saying that physical conditions or military exigencies prevent that being done.

No reason for that. Enlisted men should be more plentiful and less indispensable than officers.

The law should be left as it is in the Army at present; enlisted men must be used even at the front.

Present law provides that enlisted men from the same company or comparable unit (squadron or battery) cannot sit on the court martial.

This bill provides that ship's crew may be a unit, v. g., a battleship (1,500 men unit). The convening authority may say no one in the crew can serve on the court martial and therefore no enlisted men may be members.

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Either give the enlisted men the privilege of having fellow enlisted men as they do presently, or refuse it as in the past. Don't hem and haw. Leave the law as it is presently. No evidence of abuse. Good record.

Article 26 (b) (p. 24, line 8) [read provision]: Most doubts upon the law arise during the closed session and the law officer is not given the opportunity to confer with the court during that time, under this provision.

All he can do after the findings is to put their findings in proper form.

V. g., the law officer rules upon the sufficiency of the evidence. One member objects (he was probably a blacksmith in civilian life and he doesn't understand the ruling).

Under present practice in the Army, the court is closed and a full discussion is had. The law member explains his point fully and often the court agrees with his ruling and the trial proceeds. But now, under this provision, after the objection is made, the court is closed and the law member has to absent himself. The whole court must debate and decide the point without the benefit of having the point of law fully explained to them.

There is absolutely nothing to gain by disqualifying the law officer from being a member of the court.

One of the reasons that might have induced the framers of H. R. 2498 to include this provision may have been the analogy to civilian courts where the judge does not sit in on jury deliberations. However, under the civilian-court system, the judge has the power to set aside the verdict of guilty if it is contrary to the weight of the evidence, and this is not a power which the law member possesses.

Furthermore, the analogy fails, because the members of the court martial are judge and jury. The law officer is not the judge as in a civilian court.

Article 28 (p. 25, line 22): Appointment of reporters and interpreters: This constitutes an impractical change from the present rules which provide that the president of the court may appoint reporters and interpreters.

Supposing the court martial convenes in Mississippi and the convening authority is at Atlanta, Ga. If the power to appoint interpreters is lodged only in the convening authority, those in charge of the court martial have to confer with the convening authority and get an interpreter or reporter appointed, if an interpreter is suddenly needed or a reporter becomes ill and has to be replaced.

That should be left to the man in the local situation as under present rules. (In practice, the TJA (now called trial counsel) goes out and gets them.)

Article 29 (a) (p. 26, line 8) [read provision]: That has never been in the statute before. What happens if he is absent? I've had that experience before.

In past, provided a quorum was present, the trial could proceed. Now this provision will make for more jurisdictional arguments.

Presumably, the framers did not mean to make absence of a member a jurisdictional defect, but that should be made clear in the bill.

Article 31 (p. 27, line 20): Does not cover the case of a person arrested by civilian police here or in a foreign land and administered truth serum, or beaten, tortured, etc. The evidence could not be used under present rules in the Army, but it could under this provision.

If you want to make that change, you should think about it seriously. V. g. Tortures in Marseille.

Article 31 (d) (p. 28, line 16): "in violation of this article" pertains only to persons subject to this code.

"Unlawful inducement" wouldn't include acts done by State authorities or foreign police.

Present Articles of War 24 forbids use of any statements obtained by coercion even by civilian police.

Article 37 (p. 32, line 12): That article is similar to Articles of War 88 with one change, on page 32, line 16 "or counsel thereof". What if the counsel has been negligent, or guilty of misconduct? This question should be answered.

Compare this article with article 98 on page 73, line 8.

Does it cover gross negligence and other forms of misconduct? That should be seriously considered.

Article 98 (p. 73, line 8): This article is so broad that it is meaningless. "Any person"—"unnecessary delay" intentionally fails to enforce or comply with any provision of this code.

A comparison of article 37 with article 98 makes it obvious that these two articles were written on different days by different people.

Article 39 (p. 34, line 10), Sessions: That is a corollary of article 26 (law officer of a general court martial).

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After the damage is done, the court calls in the law officer to put their findings in proper form. Note that the law officer couldn't touch up the substance and if the case is already "screwed up"—it is just too bad.

V. g. Suppose the court finds a lesser included offense which isn't included in the greater offense as a matter of law. V. g. He is charged with burglary and the court finds him guilty of disorderly conduct which is not a necessarily included offense, but which the court thought it was. If the finding is substantially illegal, the law officer cannot help the court out. They are through.

Article 41 (b) (p. 35, line 10) [Read provision]: The present Articles of War 18 provides that each side is entitled to one peremptory challenge.

On line 10, "the accused". Is that singular or plural? Is "accused" used collectively in a joint trial?

Under present law, only one peremptory challenge is permissible for all the accused together.

This provision states "the accused". It should state "*each* accused" if that is what the draftsmen meant. That would be just, although a change from present procedure.

If the draftsmen meant to leave the law as it is at present, they should have left the present language alone.

Each accused should have a peremptory challenge because he has disadvantages enough in being tried by a joint trial.

Article 43 (p. 35, line 21), statute of limitations: There are two pages of statute of limitations, but no statute of limitations in the bill.

A. W. 39: The stopping point is the arraignment. Everybody knows there is an arraignment and especially the accused does.

In article 43 of this bill, the stopping point is the filing of sworn charges with an officer exercising summary court-martial jurisdiction.

That is an open invitation to fraud. The sworn charges can be back-dated to one's heart's content and nobody would be the wiser for it.

Or, assuming integrity, let us say one commits a minor offense. The charges are sent to an officer exercising summary court-martial jurisdiction. This officer leaves the charges in his drawer. The accused is not in confinement. The officer keeps the charges in his desk 10 years. Then he pulls out the charges and prosecutes. That is perfectly within the terms of the statute.

NOTE.—The statute stops running when it is filed with an officer exercising summary court-martial jurisdiction.

This officer doesn't have to do anything about it. He doesn't have to tell the accused. He can salt them away for a later date.

Why they go on talking for two pages about the statute of limitations after they do away with, I don't know.

(You could say that the stopping point is service of charges on the accused. That wouldn't be so bad, but under this provision he may never know he is subject to being prosecuted.)

If the accused is under arrest and in confinement, the charges have to be processed in 8 days, but when he is not under arrest or in confinement, the statute of limitations even for general court martial is cut off with the filing of the charges (which the accused may never know about).

See article 30 (b) (p. 27, line 15): Perhaps the officer exercising summary jurisdiction can be punished if he delayed unduly, but that doesn't help the accused. The officer may have thought it wasn't a good case and another officer comes 10 years later and prosecutes.

Article 30 also provides that "accused shall be informed of the charge against him as soon as practicable, but it doesn't provide that, if he isn't, the statute of limitations will run. That is the least that this bill should provide in this respect.

Article 44 (p. 37, line 21), former jeopardy: "Former jeopardy" is a slight misnomer because it deals, as the present law does, with former trial.

Wade v. *Hunter* (72 Fed. Supp. 755 and 169 F. 2d 973) (reversing the district court)). That case is being litigated presently in the Supreme Court.

Congress should make it somewhat similar to the Federal rules. It should provide that any proceeding in which evidence is taken after arraignment but interrupted prior to findings shall constitute a former trial, if it is interrupted for any reason except for "imperious necessity" (that has been interpreted by the courts).

In *Sanford* v. *Robbins* (115 F. 2d 435, certiorari denied, 312 U. S. 697), it was held that a former trial means a first complete trial and not a justly or unavoidably "interrupted one." That language could be written into the statute, if the subcommittee desires, in order to remove all doubts in the matter.

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Article 45 (b) (p. 38, line 13): "A plea of guilty by the accused shall not be received in a capital case."

If they dealt with the offense rather than the case that would make more sense.

The case is capital if it is punishable by death.

If offense were substituted for case that would mean the accused could plead guilty to committing a noncapital offense with which he is charged, or to a noncapital offense which would be necessarily included in the capital offense for which he is charged.

V. g., wartime desertion is a capital offense. The accused should be able to plead guilty to absence without leave, while denying he meant to leave the service.

Under present law, there is no restriction against his pleading guilty to a capital offense. An accused may not want the evidence before the court and on record; he may prefer to plead guilty.

Article 57 (a) (p. 47, line 7): This article demands much elucidation. It is involved and ambiguous. I find it impossible of interpretation. It is a new portion and new in the law. The armed services should be questioned upon whether they can interpret this section reasonably.

Article 57 (b) (p. 47, line 14) [read provision]: If the sentence is suspended, it does not begin to run from the date the sentence is adjudged by the court marital and the accused does not get credit for the time he serves while it is being reviewed. That may consume months. If the accused "cuts up," say, 6 months later, he goes back and serves the full time from the beginning, getting no credit for the months he spent in confinement.

I know of no precedent which now imposes liability to greater punishment for accepting the benefits of the largesse of the Executive or higher authority.

Article 58 (p. 47, line 19): Under A. W. 42, a convict may be sent to a penitentiary for only serious offenses for which confinement in excess of 1 year is authorized by title 18 of the United States Code or the law of the District of Columbia. For other offenses, accused goes to a disciplinary barracks.

Under the present bill (art. 58) this matter is left to administrative discretion. You can send a man to the penitentiary, with all the opprobrium and lasting effects upon his reputation that penitentiary confinement incur, for any offense, no matter how minor.

Under the present construction by the Army of pertinent statutory law, accused may be sent to a Federal penitentiary or Federal reformatory (v. g., Chillicothe, Ohio) or correctional institution (v. g., Alderson, W. Va.) if the offense is punishable and punished by over 1 year.

Under this bill, the accused may be sent to any penal or correctional institution under the control of the United States or which the United States may be allowed to use. What does that mean? A State penitentiary, a foreign jail?

The accused may be subject to the same discipline and treatment as a person confined or committed by the courts of the United States or State, Territory, District, or place in which the institution is situated. (Relate here the horrors of Marseille jail, for instance.)

The objections might be made that the accused cannot be confined with foreign nationals, under article 2. However, if he is not under custody of the armed forces in a foreign jail, he is not subject to this code. (See art. 2 (7).)

Authorities in the armed services would undoubtedly like to get out of the business of running jails, disciplinary barracks. I can appreciate that desire. However, they are dealing with human beings, people they should attempt to rehabilitate. (Give examples of rehabilitation.)

Young men exposed to the abnormal conditions in foreign lands often commit crimes they would never have committed at home. These men should not be sentenced to a penitentiary or foreign jail and given often a one-way ticket to becoming a hardened criminal.

Article 66 (e) (p. 53, line 24) [read the provision]: I shall not discuss the various steps that are taken before sentence is finally approved, as those are known to the members of this subcommittee and the steps may be discussed with legally trained representatives of the armed services who work daily under the established procedure. However, I do wish to point out that it is highly irregular to allow the Judge Advocate General to send a case to one board of review after another, if he is dissatisfied with a board's findings. The provision states "to the same or another board of review" (p. 54, lines 2 and 3).

Article 67 (p. 54, line 17): I will not take up the time of the subcommittee to discuss in detail the differences between this article 67 and the present law (A. W.

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8 and 50). I presume that this will be explained by men skilled in the daily dministration of justice in each of the armed services.

Under article 67, there is automatic appeal to the judicial council in all cases ıvolving a sentence to death and general officers.

However, there is no automatic appeal in cases involving sentence to life imrisonment, dismissal of an officer below the grade of general, and suspension of a ıdet, such as is provided in A. W. 48. I believe the subcommittee should ·commend retaining automatic appeal in these cases, also.

Another difficulty with this, is that when the appeal is not automatic, the ɔcused will often learn too late, if at all, of his right to appeal. He is not in a ɔsition to take the initiative. His defense counsel may have been transferred to ıother command, and the accused loses out in the shuffle.

Article 77 (p. 65, line 1), Principals: "Any person punishable under this code ho (1) commits an offense punishable by this code."

That is kind of begging the question. What is meant is undoubtedly "any ɔrson subject to this code."

Article 88 (p. 69, line 21), Disrespect toward officials [read provision]: The resent law applies to enlisted men also. Under this provision, only an officer may e punished for using contemptuous or disrespectful words against the President, ice President, Congress, etc. It's all right by me but why the distinction between fficers and enlisted men?

Article 91 (2) (p. 71, line 2): A warrant officer who willfully disobeys the lawful rder of a noncommissioned officer. That would be the lawful order of a subrdinate.

Article 91 (3) treats with contempt or is disrespectful toward a noncommisioned officer. Disrespectful toward an inferior.

That is all right with me, too, but under present law the offense is committed nly with respect to superiors noncommissioned or warrant officers (A. W. 65).

That provision had better be explained and understood before enactment.

A. W. 118 (p. 80, line 8): Present A. W. 98 deals with murder. The Manual or Courts Martial 1949, par. 179, gives a simple definition of murder which is ubstantially the same as the one used in the Manual for Courts Martial 1928.

Murder with all its ramifications has a definite meaning both under Federal aw and under military law.

While commending the draftsmen of H. R. 2498 for an attempt at simplificaion, we find here an instance of the grave danger of glibly modifying the old ɔmmon law definitions to dispense with procedural difficulties.

Under this provision, a killing in the perpetration of simple arson, housereaking would not be murder.

This provision also removes the common law year and a day rule.

Article 119 (p. 80, line 23), Manslaughter: Voluntary manslaughter is usually defined as the "intentional, unlawful killing of a human being without malice aforethought." This article does away with voluntary manslaughter by defining manslaughter too narrowly as follows:

"Any person subject to this code who, without design to effect death, kills a human being * * *."

The result is obviously not intentional because the article goes on to say: "(1) in the heat of sudden passion."

Even if that still included voluntary manslaughter, because "heat of sudden passion" is not limited to the case when it is based upon "adequate provocation," it is still lacking in precision.

This provision is lacking in essential respects and should be redrafted with a view to defining voluntary manslaughter also.

Article 121, Larceny (p. 81, line 16): Three offenses, larceny, embezzlement, and obtaining goods or money under false pretenses, are now to be termed larceny. However, essential element in all three crimes, the intent to deprive the owner permanently of his property, has been omitted.

That article should by all means be redrafted.

Article 122 (p. 82, line 3) [read article]: It is an unprecedented extension of robbery to make fear of injury to property, particularly the property of a relative, an element of robbery.

It is impossible to say what sort of property is contemplated. This article is phrased too loosely.

Article 126 (b) (p. 83, line 25), Simple arson: What kind of property? How about a hotfoot?

This article should be more carefully drawn. The type or value of property should be specified. It shouldn't be arson to set fire to a buddy's newspaper.

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Article 140 (p. 93, line 9), Delegation by the President: The President may delegate all his authority such as approval of death sentences, dismissal of officers without a trial—just any power. He may delegate it to anyone he chooses, and the latter may redelegate—perhaps all the way down to the appointing authority. This goes far beyond the First War Powers Act.

Secretary Forrestal's committee cited Public Law 759, Eightieth Congress as a precedent. That was not a fair statement. Public Law 759, Eightieth Congress, second session, section 10 (c) June 24, 1948, title I of that law, which deals with the organization for setting up the draft, contains a similar delegation clause, but that clause is not in title II which amended the Articles of War.

Under the First War Powers Act, the President delegated some of his powers in connection with courts martial to the Secretary of War, but that act was temporary. A permanent power of delegation of such sweeping proportions as that present in this bill may mean militarism run riot, given a President who is the least bit negligent.

[From the Congressional Record, February 28, 1949]

MILITARY JUSTICE

Extension of remarks of Hon. Glenn R. Davis of Wisconsin, in the House of Representatives, Monday, February 28, 1949

Mr. DAVIS of Wisconsin. Mr. Speaker, my attention has been called to a letter signed by Maj. Paul S. Davis—no relative or acquaintance—which appeared on the editorial page of the Washington Star. I take this means of calling the contents of the letter to the attention of the members of the House, and particularly to the members of the Committee on Armed Services:

"MILITARY JUSTICE

"To the EDITOR OF THE STAR:

"As a Reserve officer in the Army with several years wartime experience in the Judge Advocate General's Department, I should like to comment on the proposed Uniform Code of Military Justice recently introduced in Congress (S. 857 and H. R. 2498). Your recent editorial (February 12) suggests that it combines the best features of existing laws in each branch of the service, and some other current comments give the impression that it would improve court-martial procedure throughout all the armed services and benefit accused personnel. In fact, however, this bill, if enacted, substantially would curtail the rights now given by law to accused personnel of the Army and Air Force. It would discard many of the constructive changes made in the Army court-martial system since 1916 and particularly in 1948.

"Specifically, the following changes would restrict the rights now given to the accused in the Army and Air Force:

"(1) Under the present law a general court martial must have a trained lawyer as law member who rules on all legal questions. Under the proposed code the law member would no longer sit as a member of the court but would be limited to ruling on evidence and other matters during the trial and advising the court on legal questions. Thus the accused would lose the important safeguard of having an informed lawyer present at all times during the deliberations and voting of the court in closed session.

"(2) The power of immediate commanding officers to impose so-called company punishments would be vastly increased. In the Army and Air Force a commander now can impose only minor punishments such as extra fatigue, reprimand, or restriction or hard labor without confinement for not more than 7 days. Soldiers and airmen need not accept such punishment. If they do not believe themselves guilty, they may demand trial by a court martial. The proposed code would authorize commanders to impose on enlisted men forfeiture of one-half month's pay, confinement for 7 days, confinement on bread and water for 5 days, or reduction in grade. Furthermore, unless specifically authorized by departmental regulation, a soldier would no longer be able to refuse punishment and demand trial.

"(3) The right of a soldier to have enlisted men sit on the court trying him, conferred by the 1948 amendments, would be made subject to decision of the commanding officer as to physical conditions or military exigencies.

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"(4) A summary court martial (consisting of one officer) would have complete ower to try any noncommissioned officer, even one of long service with the highest ıting, and could reduce him to the lowest grade. As the law now stands the igher grades of noncommissioned officers can request trial by special court martial nd thereby insure that the case be heard by at least three officers and an adequate ·cord made.

"(5) Reserve personnel during inactive-duty training periods might be sub-·cted to courts martial for absence, tardiness, or other alleged offenses during ·aining periods and could be placed on active duty without their consent in order) stand trial and suffer punishment.

"(6) Under the present Army and Air Force law soldiers may be confined in a enitentiary only for very serious offenses, such as wartime desertion, mutiny, or ·imes of a civil nature for which penitentiary confinement is authorized by other ederal laws. The proposed code would authorize penitentiary confinement for ny offense, no matter how minor, thus potentially branding a soldier with a enitentiary record even for an insignificant military offense.

"Apparently the proposed bill adopts many provisions of the Naval Code of ustice, which has not been substantially revised since 1862, and attempts to npose them on the Army and Air Force. The 1943 amendments to the Army ystem were made after 3 years of careful consideration by Congress during which earings were held and all points of view considered. The new Manual for Courts ·lartial has just gone into effect, and the Army and Air Force should have a chance o give the new law a fair trial. If more changes are desirable, they can then be ıade in the light of experience.

"I am not sufficiently familiar with naval problems to know whether the Army ystem could or should be fully applied in the Navy or to express an opinion as to ·hat changes, if any, should be made in the present Navy code. But whether ır not uniformity of procedure between the services is an ultimately desirable goal, t certainly should not be achieved at the cost of destroying wholesome safeguards ıow existing in the Army and the Air Force system of military justice.

"PAUL S. DAVIS,
"*Major, JAGD (Reserve).*"

Mr. BROOKS. Mr. Ford, we will be very happy to hear from you.

STATEMENT OF HON. GERALD R. FORD, JR., MEMBER OF CONGRESS FROM THE FIFTH DISTRICT OF THE STATE OF MICHIGAN

Mr. FORD. My name is Gerald R. Ford, Jr., Representative of the Fifth District, State of Michigan.

I am here with comments along two lines, Mr. Chairman. They are based upon my experience of some 46 months in the United States Navy during World War II and on a precise situation that has arisen because of the treatment that a constituent of mine has received since I took office on January 3, 1949.

In general, while I was in the service, I always rebelled, and I still think it is true, as far as the manner in which military justice was meted out by the various people in charge of it in the Navy, and otherwise.

It seems to me that a general statement can be made, with all honesty, that in the Navy, at least, justice is sometimes forgotten in order to impose on people in the service punishment of some kind or other.

I am particularly concerned about the fact that in courts martial, too often a court-martial board does not determine the guilt or innocence of the accused; but rather seeks to award punishment of one sort or another.

I can recall hearing conversations between members of boards along this line: "What does the Old Man want us to do?"

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Now, that only illustrates the fact that these court-martial boards are not attempting to decide one way or another—is the man guilty or innocent. They are only trying to find out what the captain of a ship, or the commanding officer of a station, wants done with the man.

It was my experience on board ship to attend captain's mass and executive officer's mass, and then see what punishment was given out; and I also participated in various courts martial; and the whole system is fundamentally wrong; and I am particularly pleased to see something being done about it.

I am not familiar with the exact legislation here, but I think that I reflect the attitude of many civilians who served in the armed forces during the last war.

Now, that is a general comment.

Since I have been in office, and even prior to that, a matter was called to my attention that occurred to in regard to the Air Force. Gentlemen, this is an extremely serious matter; and I think it is also an indication that you have got to do something, and you have got to do it quickly.

I contacted Mr. Symington about this; and I have talked with the people on his staff. This may take a few minutes, but it is vital. Here are the facts:

A young man by the name of Lester Bunker, whose serial number is AF16084179, was a private, I think, maybe a sergeant now, in the Air Force during the last war. He was discharged as of November 2, 1945. He goes to a home; he lives in the town or near the town of Holland, Mich. He gets married; has a child; he takes the benefits of the GI bill; buys a home under the GI mortgage provisions; he gets schooling under the GI bill.

Almost 3 years later, the FBI comes into his home at noon time, takes him by the nape of the neck; and takes him down to the local jail and says, "You are a deserter." Mind you, almost 3 years after he was allegedly discharged.

Mr. ELSTON. Did he have his honorable discharge?

Mr. FORD. Absolutely; honorable discharge. Living in his community for almost 3 years; going through the ordinary ways of life just as you and I.

Well, I was in the position of being a nominee; wasn't elected until November 2.

Citizens of that community became rather aroused; contacted Senator Ferguson; he got in touch with people down here in Washington; and for a short period of time, he was released.

The Air Force contends that he, on November 3, 1945, the day after he was discharged, reenlisted. He absolutely and irrevocably denies it. Now, it so happens that any of us who went through the process of being discharged or released from service, probably had a stack of papers that high [indicating], if not higher, to sign; and I know, from personal experience, that I may have signed a reenlistment myself in the hurry to get out. But he denies that he did it. By mistake, perhaps he might have; I don't know.

Furthermore, I can't see why it took them 3 years to finally apprehend a man who has never been out of his own community, for all intents and purposes.

Mr. BROOKS. Was he tried on that point?

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Mr. FORD. I am just coming to that point. Here is what happened: He is taken down to Selfridge Field, which is, I guess, the only Air Force base in the lower peninsula of Michigan. He is put in the guardhouse; he receives no pay.

In the meantime, he has had to give up his home; he has practically lost the home that he was purchasing on a GI mortgage, and would have if the bankers in the community hadn't given him some consideration. He is away from his wife and 2-year-old child.

The citizens of that community can't understand this abritrary action; and I don't blame them.

Well, after January 3, when I came to Washington, I tried to get into the matter and find out why, at least, he wasn't being brought up for trial. Let me state at this time that he still hasn't been brought up for trial.

Mr. BROOKS. Did he go to the Federal court for a habeas corpus?

Mr. FORD. I am coming to that, sir, because I think if he had had the funds, that he absolutely had the right to get a habeas corpus release; but after all, we must remember he is just an ordinary workingman and he has lost every dime he ever had.

Now, because of the treatment that he received at Selfridge Field, it finally became necessary for them to send him down to an Army hospital in Battle Creek, Mich., and put him in a mental ward.

Here is an individual who was an honest, upright citizen; and it is quite possible that the treatment that he has received in 4 or 5 months may very well make him a charge on society for the rest of his life. In other words, because of their dilatory tactics, because of their tactics of having him in the guardhouse and under confinement without a trial, we now have a possible mental case.

If they had tried him right after he was picked up, the whole thing would have been resolved—was he guilty or innocent? But in the meantime, this boy, who thinks he is innocent, except for limited periods of time he was allowed to go home, has been in the guardhouse or in a mental hospital.

Finally, on February 7, after considerable concern on my part, I wrote Mr. Symington; and I will leave a copy of the letter.

(The letter referred to is as follows:)

FEBRUARY 7, 1949.

Hon. W. STUART SYMINGTON,
The Secretary of the Air Force,
Pentagon Building, Washington, D. C.

DEAR SIR: I am writing to inquire as to the status of Pvt. Lester Bunker, AF16084179, who is at Selfridge Field Air Force base, Detroit, Mich. Senator Homer Ferguson has contacted you before and your office forwarded to him certain information but I write at this time because it appears that recent developments have taken place that should be called to your personal attention.

From the facts in my possession it appears that the Air Force has handled this matter poorly to say the least. As I will point out in this letter, and as you will find from a thorough examination of the situation, a young man's future health and happiness may well be destroyed by a lack of proper administration down the line in your Department. From my own experiences covering 46 months in the United States Navy during the last war I can appreciate just what is happening at Selfridge Field. It is typical of military justice. In the case of most courts martial, the enlisted man's guilt is a foregone conclusion, the extent of his punishment being the only issue. I rebelled against the system while in the service and it appears even more unfair now that I am a civilian.

The following facts are indisputable: (1) Lester Bunker was discharged from the Air Force November 2, 1945, at Lowry Field.

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(2) He has lived from that date to September 27, 1948, in the vicinity of Holland, Mich., either with his parents or with his wife, except for a limited time at East Lansing, Mich., while he was attending Michigan State College.

(3) He was married March 26, 1946, and now is the father of a young child and he and his wife have purchased a small home with the aid of a GI loan. I believe they have had to either dispose of this home by selling or renting because since September he has been incarcerated and without income while being detained by the Air Force.

(4) Between November 2, 1945, and September 27, 1948, he had been regularly employed either on his father's farm, at odd jobs in local industries, or on the maintenance staff of Hope College, Holland, Mich.

(5) He has received educational training under the GI bill at Michigan State College after being duly certified by the Veterans' Administration.

(6) On September 27, 1948, the FBI on instructions from the Air Force seized him and since that date he has been either in the Holland city jail, the guardhouse at Selfridge Feld, or the mental ward at the Army hospital at Fort Custer, Mich. For several weeks during the Christmas season he was allowed to be home.

The following facts are alleged to be true: (1) The Air Force originally contended Lester Bunker reenlisted November 3, 1945, but now contends he may be accused of illegally accepting service pay. I am informed he denies both charges.

(2) The Air Force, after waiting nearly 3 years to apprehend a person who was always at his home, now claims the reason for the 5-month delay in bringing the man to trial is the need for more time in gathering evidence and preparing for trial.

(3) The Air Force officials at Selfridge Field have used brutal tactics in trying to obtain a confession from Mr. Bunker. This incessant grilling has made Mr. Bunker ill mentally and as a result he has been a patient on several occasions at the Army hospital, Fort Custer, Mich.

(4) The Air Force officers assigned to defend the accused in contacting various people in Mr. Bunker's home town have adopted the attitude that he was guilty instead of seeking information to show his innocence.

Frankly, it appears that Mr. Bunker must seek the aid of the civilian courts by a writ of habeas corpus unless the Air Force acts promptly and with a due regard for justice and equity. I have analyzed the charges to the best of my ability and as a lawyer I believe he probably should have his rights litigated in a Federal court, particularly if the Air Force does not show some regard for the due process of law.

I am sending copies of this letter to Mr. Bunker, the attorney who may represent him in the civilian courts, and several interested citizens in his home town. I hope it will not be necessary for the accused to resort to such action for the protection of his fundamental rights but unless action of some sort is immediately taken I shall advise the parties accordingly.

I look forward to a full report on this matter without delay.

Sincerely,

GERALD R. FORD, Jr.

Mr. FORD. Since that time, I have gotten more consideration and so has the boy; but he is still incarcerated. I am told that he is presently to come up before some board which will determine whether or not his activities since November 3, 1945, are such that he is unable to decide between right and wrong and, therefore, he ought to be given a discharge.

I don't understand that procedure in the Air Force; but apparently it is being done.

Now, there are also some other things that the Air Force claims, and I want to state them. They say that he received some pay while he was at home during this 3-year period. He admits he received some pay, but it was back pay that wasn't paid to him when he was discharged.

They also say, and this is amusing, that he went back to Selfridge Field some time in '46; checked in and checked out, after spending 1 night there. That is true; he did. He went back to Selfridge Field to reenlist, to seek overseas duty. He got there, and some-

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time during the day talked to some people; and they said he could reenlist but they couldn't assign him overseas. Well, it was late in the day and he checked to see if he could get some equipment—or whatever they called it in the Air Force—to stay overnight. They issued it to him.

The next day, after getting the answer that I indicated, he left. Here was a man that was for 3 years supposedly a deserter; and he goes right back to the Air Force base to reenlist.

Well, it is such a sordid case, Mr. Chairman, that I cannot help but come before this committee; and I intend to bring it up on the floor of the House at the time this bill comes up for consideration, because it is a gross example of how military justice can operate.

Mr. BROOKS. Would you call that military justice or injustice?

Mr. FORD. I think you understand what I meant.

Mr. BROOKS. That is right.

Mr. FORD. It seems to me that here is a case of a perfectly honorable and upright citizen who has been deprived of his rights as a citizen of this country, after having served 3 or 4 years attempting to defend this country; and anything that you gentlemen can do to obviate this kind of situation certainly has my wholehearted sympathy and support.

We talk about freedom. I meant to get up yesterday on the floor of the House and bring this up, but after talking to Mr. Elston, I decided not to do it. The bill was up yesterday for five hundred-some-thousand men in the Air Force to be authorized. If they can't treat one man better than the treatment this man has gotten in my humble estimation, whoever is in charge is incapable of treating five hundred-some-thousand individuals. If there are any questions I will be glad to answer them.

Mr. BROOKS. Mr. Ford, we appreciate your statement very much.

Mr. Hardy, do you have any questions?

Mr. HARDY. No.

Mr. BROOKS. Mr. deGraffenried?

Mr. DEGRAFFENRIED. No, sir.

Mr. BROOKS. Mr. Elston?

Mr. ELSTON. Of course, you understand, Mr. Ford, the very purpose of writing this bill is to take care of cases like that, and all other cases where there might be an injustice, and to insure to an accused person a speedy trial. I don't believe what you have testified to could happen after a bill of this kind would be passed, because the accused would be entitled to an early trial, entitled to counsel, entitled to have pretrial investigation, at which he could be present and have counsel present; know the nature of the charges against him; have an opportunity to investigate the matter. All those things we are trying to take care of in this bill. I think the case that you have cited largely arises because we didn't have the kind of bill we are trying to enact.

Mr. FORD. That is right. I am so happy that some action is being taken, because this kind of situation cannot continue without having an unfavorable reaction as far as our armed forces are concerned; and I, for one, want the armed forces to be looked up to and not to be looked down at, because the treatment of individuals who are good citizens of our community.

Mr. BROOKS. Mr. Ford, I suggest this: If there are any additional details that come to your mind, that you might communicate them to

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Mr. Smart. We will check over the provisions of the bill which was passed last year to see whether or not there were any omissions in it which would close up such a situation that you explain. We certainly thank you very much for coming here. We appreciate your testimony.

Mr. ELSTON. The provisions of the bill, Mr. Ford, are contained in the Selective Service Act which, of course, applies to the Air Force.

Mr. BROOKS. Now, if there are no further questions or business, the committee will stand adjourned until 10 o'clock tomorrow morning when we will begin a section-by-section reading of the bill.

(Whereupon at 12:10 p. m., the committee adjourned pursuant to reconvening Friday, March 18, 1949, at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

FRIDAY, MARCH 18, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will please come to order.

This morning, gentlemen of the committee, we found that one witness asked for 10 minutes' time. He is Mr. Thomas King, national judge advocate of the Reserve Officers Association. Since he has had the experience of trying cases under the Elston bill, I felt like the committee would want to hear him 10 minutes.

Mr. ANDERSON. Yes.

Mr. BROOKS. So, Mr. King, we appreciate your appearance here this morning.

Do you have a prepared statement?

Mr. KING. No, sir; I do not have.

Mr. BROOKS. All right, sir, just proceed, sir.

STATEMENT OF THOMAS H. KING, LIEUTENANT COLONEL, J. A. G. RESERVE, NATIONAL JUDGE ADVOCATE OF THE RESERVE OFFICERS' ASSOCIATION AND PRESIDENT OF THE DISTRICT DEPARTMENT

Mr. KING. My name is Thomas H. King, Lieutenant Colonel, J. A. G. Reserve, national judge advocate of the Reserve Officers' Association and president of the District department of that association.

There are four points which we feel should be emphasized in this bill: The judicial council, the law member sitting with the court, the inactive training duty reserve section under article 2, and the Judge Advocate Corps in the three services.

Insofar as the judicial council is concerned, we feel that for a person to sit on a military courts-martial case he should have experience with his subject. If you get a lawyer to handle a matter involving corporation law you get one who is experienced with corporations and the law pertinent to it.

If you get a lawyer who is to handle an insurance problem, you want an insurance lawyer to do it. We feel that there should be military lawyers concerned with military cases.

We feel that a man who has no experience in the service should not say what goes on in the service because he does not have the background to do it.

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And we feel that the judicial council as set up under the Elston bill will be a very practical council. A difficult problem in passing this particular bill would be that the various sections of the Judge Advocate General's Department would for the next few years be involved in handling courts-martial under three entirely different systems, because you had the system in existence prior to the passage of the Elston bill, and you have the system set up under the Elston bill and you will have the system set up under this bill.

Furthermore, it is our opinion that by changing the council there will be rights and privileges which are presently given to the accused under the Elston bill which will be taken away.

Under the Elston bill you have set up a council of general officers with the same privileges as the board of review, and that is to consider the evidence. Now those people who are more experienced in their respective positions because of their grade and their time in the service certainly should be given the same rights as a board of review of lesser ranging officers.

Now the question of the law member sitting with the court. To me it is inconceivable that the law member not sit with the court. We talk about endeavoring to take from command authority the right to control a court. But what do we do? We take the one man who is certified by the Judge Advocate General as qualified to sit on a court and take him out of it.

He is the one man who is not subject to command influence if there is any, because he has been especially certified to sit as the law member of that court or the law officer or whatever his title may be.

To us who have tried a few of these cases—and I had the experience in February of trying one under the Elston bill—it was one of the greatest pleasures I had, to have a law officer sitting up on that court who knew what he was doing. While we did not agree as to every point, we had a very capable man. And while the result of the case was not to my total satisfaction, I left that courtroom with a definite feeling that a fair break had been given to the accused.

Now as to the question of the Judge Advocate Corps. I do not know how the Air Corps functions with its present military justice system because they have in their 1949 Courts-Martial Manual adopted the same Courts-Martial Manual as the Army has, using the Elston law as the basis for procedure, as the basis for sentencing, as the basis for convictions, and as the basis for the essential elements of offenses.

They have taken it lock, stock, and barrel. But they have completely dropped off the last four paragraphs which require that there be a Judge Advocate Corps and that the officer sitting as the law member be a member of that corps or duly certified by the Judge Advocate General of the Air Force.

In this case—and I am reliably informed—in no instance do they have an officer certified by the Judge Advocate General, but the Chief of Staff has appointed a number of judge advocates, without the necessary requirement or certificate by the Judge Advocate General that this particular officer is so qualified.

I know that the officer concerned in my case was duly qualified, (a) by my private conversation with him, and (b) by his demeanor on the court. But we cannot operate under by guess and by God.

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but we have to have it in the book as it is. Now either they are operating under the Elston law or they are not.

And I think they should be required to operate under the Elston law because that law was in effect at the time the statute was passed, saying that they would take over the military justice system then in effect in the Army.

Now the next point that I have been concerned with is in the Elston law, and it is the only point I do not agree with substantially, and that is the percentage of officers required to be in the Judge Advocate Corps. The Elston law says one and a half percent. I do not see how they can operate with the full requirements with less than two and a half percent.

The next point—and with that I am going to finish—is the question of making Reserve officers in inactive status, that is on inactive duty training, subject to the Articles of War. To me it is a gag if it were applied not as intended, not as these people say they think it should be put into effect, but within the letter of the law.

Suppose I come in to my commanding officer—Colonel Wiener—for a drill 10 minutes late and I have said something down here that he did not like or the Department did not like. Well, they can court martial me, put me on an active duty, and hold me because I was 10 minutes late as the excuse. It is a dangerous thing.

I personally have no objection to being tried by a court martial, because I am convinced that you get just as fair a break there as you do with any civilian court in the country. And with the requirements for an investigation under article of war 70, or whatever it is in the Elston bill, you have to have an experienced investigator and they do not kid with you. They get the facts.

They get them by means that we do not approve, that the defense lawyer will get up before the court and scream his head off about, but they really get the facts and if you are guilty, I think they get you.

And I think also if you are not guilty they are less likely to convict you.

As to this business of influence of courts, my personal experience in Europe was a very unique one. I sat as a claims commission and not as one having to do with military justice. I tried several thousand cases. And I had an office next door to the president of our general court.

We are very good friends. And I tell you that even if the staff judge advocate did try to influence him, he had the courage of his convictions, and I think most of them did because they were good officers.

They had the courage of their convictions to do what they thought was right. Some of them may not have, but we also have civilians who do not have the courage of their convictions.

So, gentlemen, with those four things, we really feel that the military being experienced in the military and the Navy officers being experienced in Navy activities, should be the ones to make the decision, with a definite limitation as to the manner in which these people are appointed. I like the Elston bill.

I fought for it. I think this committee did a magnificent job in preparing it. I think they came out with something good.

Mr. BROOKS. Would you think the Elston bill was perfectly adapted to the Navy needs?

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Mr. KING. I think, Mr. Chairman, that the Elston bill could be substantially adapted to it. In effect, as to the Army and the Air Forces, we think——

Mr. BROOKS. What adaptations would you make?

Mr. KING. I frankly am not sufficiently familiar with the Navy procedure.

Mr. BROOKS. Of course, I just call your attention to this fact, that this proposed bill attempts to make a uniform system, and of course in that case there is bound to be some alterations to meet the needs of the Navy and the Air.

Mr. KING. Mr. Chairman, I believe that the Elston bill could be used by the Navy.

Mr. BROOKS. Without any changes?

Mr. KING. Without any substantial changes or material change. But I do feel that the Navy does have peculiar problems. Every commander of a ship, be it large or small, has his own problem. It is materially different in the Army than in the Air Force, where you are substantially land-based and you are always part of a larger echelon.

Mr. BROOKS. Could I ask you this, then: Do you believe that we should have a uniform code?

Mr. KING. I very definitely believe that we should have a uniform code, insofar as punitive articles are concerned. We do not have the same system in the Navy nor the Air Force or the Army for command channels.

We have an entirely different break-down, necessitated by the type of organizations that they are. The Navy functions off of the coast substantially. They are at sea. The Air Force is practically always land-based except when coordinated with the Navy.

I believe that the Elston bill, with very little change, could be made available and effective insofar as the Navy is concerned. And I have had that opinion expressed to me by many of my brother Reserve officers in the ROA who are Navy officers and with substantially command experience.

Mr. BROOKS. Any questions?

Mr. DEGRAFFENRIED. As I understand, you feel this, as one of your objections to this bill: You feel that the Reserve officers on inactive list should not come within the operation of this bill; is that correct?

Mr. KING. That is right, sir.

Mr. DEGRAFFENRIED. Is that the thought you had?

Mr. KING. Yes, sir.

Mr. DEGRAFFENRIED. They should not come within the operations of the bill.

Mr. KING. That is right.

Mr. DEGRAFFENRIED. That they should really be subject to civil authorities only.

Mr. KING. That is right.

Mr. DEGRAFFENRIED. Just as any other civilian?

Mr. KING. I think, though, that the military service has a very definite system by which a Reserve officer on inactive status can be properly taken care of, and that is by a board of fitness which they have at this time, and they can throw him out if he is not a proper person to be in there.

Mr. DEGRAFFENRIED. But for any offenses that he commits, any alleged offenses that he commits that might not go to that extent, for

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him to be thrown out, do you think he should be tried before a civilian tribunal as any other civilian?

Mr. KING. That is right, sir.

Mr. BROOKS. Suppose you have this case. Say a Reserve officer over the week end takes a plane out in violation of the orders and regulations and there is a crack-up and someone is hurt. What would be your remedy there? Would it be by military or civilian court?

Mr. KING. Mr. Chairman, it is a very simple thing for them and for the Department concerned to put him on active duty for 2 days for that period of time. He is drawing the pay for those 2 days. He is doing everything.

It is a question of how the order is written. And he has to volunteer for it in the first place. He can be put on active duty for 2 days or 1 day or indefinitely. It is a matter of just cutting an order.

Mr. BROOKS. You would put him on active duty?

Mr. KING. Certainly I would.

Mr. BROOKS. For that time.

Mr. KING. If he is going to perform a military duty, for a couple of days, and he ought to be in the service. But if he is going down here in the evening for 2 hours of schooling or attending lecture, as we did the other night with Dr. Compton, are you going to charge a man with violation of the ninety-sixth article of war—the catch-all section—merely because he is late?

I think the proposition of a Reserve officer being subjected to courts-martial proceedings and being put on active duty pending his trial and taken away from his civilian occupation is an undue penalty in itself.

It would crucify most of them to be taken away from their civilian jobs for 10 days, 2 weeks, or 30 days pending the trial and the service of a sentence, whereas he can be thrown out if he is not a suitable officer.

Mr. BROOKS. Mr. Anderson?

Mr. ANDERSON. No questions, Mr. Chairman.

Mr. BROOKS. Thank you very kindly, Mr. King.

Mr. KING. Thank you, sir.

Mr. SMART. Mr. Chairman.

Mr. BROOKS. Yes.

Mr. SMART. Before you proceed with a section-by-section reading of the bill, I have two letters here which I would like to include in the record. One is from the Air Reserve Association expressing their appreciation for being offered an opportunity to testify but respectfully declining and offering this letter wherein they generally endorse this bill. I would like to offer it for the record.

Mr. BROOKS. If there is no objection, it will be put in the record.

(The letter referred to is as follows:)

AIR RESERVE ASSOCIATION,
Washington 5, D. C., March 16, 1949.

Hon. CARL VINSON,
Chairman, Committee on Armed Services,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: It is the desire of the Air Reserve Association to express its endorsement and support of H. R. 2824.

The enactment of this bill will do much to stimulate and sustain individual interest in the Reserve program. Training facilities are a must for any real Reserve program. This bill will do much to fill that "must."

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The association wishes particularly to commend the joint utilization provisions of the bill. It complies with the resolutions adopted at our national conventions.

Fully aware of the limitations of time on the committee's crowded schedule, the association does not request an appearance before the committee feeling that the expression set forth in this letter will serve the purposes of the committee.

Sincerely yours,

WILLIAM C. LEWIS,
Executive Director.

Mr. SMART. The second comes from Mr. Knowlton Durham, of New York, who is presently chairman of a military justice committee of the New York State Bar Association. They likewise decline to testify, but offer their statement for the record.

Mr. BROOKS. If there is no objection, it will be incorporated in the record.

(The letter and statement referred to follows:)

NEW YORK 5, N. Y., *March 7, 1949.*

Hon. CARL VINSON,
Chairman, House of Representatives Committee on Armed Services,
House Office Building, Washington 25, D. C.

DEAR MR. VINSON: In response to previous correspondence between Mr. Brooks and yourself with Mr. McCook, and Mr. Smart's letter to me of February 25, 1949, I have the honor to submit to you herewith a statement on behalf of the special committee on administration of military justice of the New York State Bar Association relative to H. R. 2498, a bill to provide a uniform code of military justice.

Sincerely,

KNOWLTON DURHAM, *Chairman.*

MARCH 7, 1949.

To the Committee on Armed Services, House of Representatives, Washington, D. C.:

Your chairman has been kind enough to invite this committee to submit its evaluation of the proposed legislation H. R. 2498, the so-called Uniform Code of Military Justice.

The special committee on the administration of military justice of the New York State Bar Association was appointed during the summer of 1946 to make its own inquiries along lines similar to those then being carried on by the War Department Advisory (Vanderbilt) committee. Our 14 members are all veterans of the Army, Navy, or Air Corps who served during one or more wars, and all but two have been either members of the Judge Advocate General's Department or at various times have been detailed to the work of that Office. Through the then chairman of the committee, Judge Philip J. McCook, we kept in touch with the War Department committee.

When the War Department committee's report was published, we found that while we disagreed with its recommendations in several respects, we were generally in accord with its approach and premises.

Meanwhile the House Committee on Military Affairs had been conducting its own inquiry and had issued its report dated August 1, 1946, comprising some 16 recommendations. These were all carefully considered by us, and while we agreed with most of the recommendations, we disagreed with a few, and supplied some original thoughts of our own.

We submitted our original report to the seventieth annual meeting of the New York State Bar Association on January 24, 1947, and it was by vote of the members present adopted.

Since then the Elston bill affecting the Army before unification has been enacted into law, and the majority of our recommendations have been disposed of, generally speaking, in a manner satisfactory to us.

Now, your committee has before it for consideration H. R. 2498, a bill to provide a Uniform Code of Military Justice, and your chairman has been interested sufficiently in the proceedings of our committee to state that he would be pleased to receive our evaluation of the proposed legislation, together with any suggested amendments.

For the purpose of this study, Chairman McCook appointed a subcommittee of three, representing each of the three branches of the service—Army, Navy, and Air Corps.

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This subcommittee, on January 29, 1947, in reply to the invitation from Prof. Edward M. Morgan, chairman, submitted its recommendations in a letter addressed to the Committee on Uniform Code of Military Justice. That letter is available to your committee should you desire to see it. We shall not burden the record by quoting, but it does express our views so succinctly that we urge upon you its careful consideration. Of course, you are also welcome to our previous publications, should you desire them.

From first to last we have believed, argued for and emphasized the principle that the judicial system of the armed services should not be removed from command control.

The uniform code wisely continues the authority to convene the court in the commanding officer (arts. 22, 23, 24). The initial action on the record after trial is also taken by the convening authority (arts. 60, 61, 62, 63). These provisions are substantially the same as present Army and Navy procedure. Provisions for review by boards of review constituted by the Judge Advocate General (arts. 63, 66) are substantially similar to the present Army system of review. Finally, there is a wholly new provision for review by a Judicial Council (art. 67) with provision for appellate counsel (art. 70). Improper interference by the convening authority or any other commanding officer, with the court or with "any member, law officer, or counsel thereof" is prohibited (art. 37) and is made punishable (art. 98).

In our original report to the New York State Bar Association, above referred to, we presented a number of objections to recommendations contained in the report of the House Committee on Military Affairs (Rept. No. 2722, Aug. 1, 1946). Our most important objections have either been recognized or otherwise disposed of to our general satisfaction in the subsequent enactment of the Elston bill.

This leaves for the purpose of our present discussion only the proposed fundamental change of separation of courts martial from command, not provided for in the uniform code nor in the Elston Act. On this question we know that separation will be pressed for by its advocates, as it has been by the Vanderbilt Committee, the American and other bar associations. We urge the contrary view, as we have from the beginning. We agree with Judge Patterson, who has repeatedly said:

"It would be unwise to have particular functions within the Army carried out by officers who are independent and separate from command and the responsibilities which go with command."

We also agree with General Eisenhower, in his statement to members of the New York Bar at the Lawyers Club on November 17, 1948, that:

"This division of command responsibility and the responsibility for the adjudication of offenses and of accused offenders, cannot be as separate as it is in our democratic government.

"Somewhere along the line * * * the man who makes the final decision must have also on his shoulders responsibility for winning a war; and please never forget that."

The success of an Army depends upon its commander. His is the responsibility to maintain discipline in the command. So also must he bear the responsibility for the proper administration of the system of justice within his command.

Because we find some abuse of authority gives no sufficient reason for abandoning the cardinal principle of unity of command. The uniform code makes provision for correcting abuses. We believe that H. R. 2498 is a good bill. It retains the best points of the Elston Act which took a long forward step in reform of military justice and adds good new points of its own.

We ask that you recommend it for enactment into law.

Respectfully,

KNOWLTON DURHAM,
Chairman, Special Committee on Administration of Military Justice, New York State Bar Association.

Mr. SMART. I would like further to say, Mr. Chairman, that Mr. Arthur J. Keeffe who presided over a group of gentlemen who prepared a report relative to Navy justice, known as the Keeffe report likewise has declined to testify, but I now offer his statement for the record.

Mr. BROOKS. Without objection, it is so ordered.

(The statement referred to is as follows:)

STATEMENT OF PROF. ARTHUR JOHN KEEFFE, OF CORNELL LAW SCHOOL

For over 11 years I have been a teacher of law at Cornell Law School in Ithaca, N. Y. Prior to that time I was for about 12 years a practicing lawyer with the

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firm known now as Milbank, Tweed, Hope, and Hadley at 15 Broad Street, New York, N. Y. From April 9, 1946, to June 12, 1947, I was president of the General Court-Martial Sentence Review Board of the United States Navy. I took the job at Mr. Forrestal's request to give a civilian review to over 2,000 naval court-martial and to study the court-martial system and make recommendations for its reform. With Felix Larkin, Esq., the executive secretary of the committee that drafted this Uniform Code, I was one of two civilian members of an otherwise all uniformed board.

I regret to state that I must oppose the enactment of this proposed uniform code in its present form. I do this the more reluctantly because of the personal admiration I have for both Prof. Edmund M. Morgan, Jr., and Felix Larkin, Esq. They are the ablest of lawyers and the finest of fellows. Mine is also a reluctant opposition because there is a beginning in this code of real reform. An effort has been made to achieve the same procedures in the three services and for the first time civilian judges are created to give a limited review. In contrast with the Chamberlain bill of 1920 for which Professor Morgan once fourght so hard, this proposed uniform code, however, is a sorry substitute.

I oppose the code for two reasons:

1. Lack of Civilian Advisory Council.

After an exhaustive study of the court-martial system, Army and Navy, American and British and to the extent available other foreign countries, our board recommended to Mr. Forrestal that an advisory council be appointed to draft reform proposals for Congress.

This recommendation was in the highest tradition of the legal profession. Roscoe Pound of the Harvard Law School many years ago suggested it to the American Bar Association. That association under the magnificent leadership of William D. Mitchell and with the aid of Chief Justice Hughes and Attorney General Cummings obtained rule making powers from the Congress for our Federal courts. Mr. Mitchell is at present chairman of the advisory committee to the Supreme Court with respect to the Federal Rules of Civil Procedure. There was a similar Advisory Committee on the Federal Criminal Rules under the chairmanship of Chief Justice Floyd E. Thompson. In the State of New York, as the result of a celebrated law review article of Mr. Justice Benjamin Cardozo, two similar advisory bodies were long ago established, the Judicial Council and the Law Revision Commission.

The reason why law reform has gone to court rules rather than codes is because codes quickly become rigid, and out of date. The Congress has too many other important things to do to make changes in legal procedure. A splendid beginning was made in the drafting of court martial by Judge Matthew McGuire for the Navy.

In my personal judgment the worst thing wrong with this uniform code is its failure to provide the permanent, independent advisory council which our board suggested and which the American Bar Association suggests.

The uniform code does provide for three civilian judges, and I am happy that it does, and the annual report of these men and the three Judge Advocates General. Code 67g is a poor substitute for the informed disinterested criticism that men such as Arthur Vanderbilt and Matthew McGuire would give the armed services and the Congress.

A moment's reflection will convince you that this is so. Take any of a myriad of agencies that the Congress from time to time creates. Each begins zealously and alive to the public interest. All too quickly each agency comes to associate as the public the litigants that appear before it. In many cases we have seen the best agency go quickly to pot because there was not that disinterested civilian criticism that only a body constituted as the suggested advisory council could give. I think many agencies in Washington would welcome aid such as we suggest and I cannot understand why the armed services reject it.

Having made the mistake of not appointing an advisory council of distinguished civilians to draft this code, the mistake is compounded by sending this code to the Congress without clearing it with the American Bar Association and other representative lawyer and veteran groups.

There can be only one explanation as to why this has not been done. The armed services do not want any civilian control if they can avoid it.

Let me call to your attention what an advisory council can do.

(*a*) There ought to be one Judge Advocate Department, not three.

Why have three Judge Advocates General? Why not merge completely at least the review functions of the three services and save the country money and become more efficient? It should be noted that Mr. Forrestal has suggested something of this sort for the medical service.

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(*b*) There should be one top board of Sentence Review.

The code does not provide for a top board of sentence review or clemency board. (See Keeffe Report, pp. 230–236.) Presumably such boards are to be set up administratively by regulations. (See art. 36.) This means that with no genuine civilian advisory council, the services will do as they please about such boards. It is not even provided that the three civilian judges buried in the Department of Defense need be consulted, though doubtless they would be. This is most important because over 75 percent of all court-martial cases are desertion or a. w. o. l. and involve difficult psychiatric problems. A citizen army is bound to have many citizens who cannot make the necessary adjustment. Our board suggested that this important problem be tackled by a top clemency board headed by a distinguished civilian lawyer upon which, in addition to the clemency officers of the services, there would be an able civilian psychiatrist and penologist.

There is need to study the prison systems of the services and such a top board of sentence review would represent a needed check on the military prisons. Let's not forget what Thomas Mott Osborn found in the military prisons after the First World War. It would be an invaluable aid to a civilian advisory council to have such a check on the prisons. Where is it?

(*c*) Are officers treated better than men?

A great deal has been said about officers receiving less severe treatment than enlisted men. Though our board reviewed almost every case of a man convicted by a naval court martial down to 1 month after VJ-day who was still in prison when we reached his case, we saw the cases of only three officers. We thus could not say whether officers did or did not receive more favorable treatment than men and we pointed out that the problem was difficult and ought to be studied after a review of the cases (Keeffe Report, pp. 327–333). Nothing has been done about it. Will the three buried judges do this review with the three Judge Advocates General? You can be sure that if the Congress does not create the advisory council, it will never be done.

(*d*) The effect of each discharge should be studied.

Clemency has been granted in many cases by both the Army and Navy by changing a dishonorable discharge to a bad-conduct discharge. This is so much double talk because so far as our board could discover, there is very little practical difference between a bad-conduct and a dishonorable discharge. We asked that the advisory council be created to study those discharges so that if a man deserves some clemency and his discharge is to be changed from dishonorable to a better ticket, he will receive the mercy (Keeffe Report, pp. 318–325). There has been no advisory council and, therefore, there is not likely to be any correction of this dreadful injustice. To a man of self-respect, one of these discharges is civil death because a recipient of either cannot be employed by the State or Federal Government or many corporations.

(*e*) Should not double jeopardy be abolished?

From the cases our board reviewed we were worried about the prevalence of double jeopardy in the armed services. An enlisted man gets into trouble. He is arrested and tried and jailed in the civil courts or his case is heard and he is acquitted or his sentence is suspended. When he is released by the civil authorities he is promptly tried again by the military for the same offense. This is wrong. In our report we said so and asked that the Advisory Council study this in all its phases. (See Keeffe Report, pp. 270 to 278.) As you might expect with no advisory council, nothing has been done and article 14 of this uniform code preserves double jeopardy in all its glory.

(*f*) The barbarous practice of not dating sentence from arrest continues in this code.

In case after case our board reviewed, no credit was given for time the enlisted man spent in jail before sentence. Article 57 (b) provides that sentence runs from the date of rendition and I cannot see that any credit is to be given for prior confinement.

In our report we asked that credit be given in whole or in part from the date of arrest depending upon whether the defendant was confined to quarters or the post or incarcerated in the brig (Keeffe Report, pp. 182–186). The point is important as in many cases delay of trial for proper preparation is in the defendant's interest and if subsequently convicted he ought to receive credit from arrest in the sentence rendered by the trial court. Once more an advisory council is needed.

(g) Could not an advisory council advise the armed services and the Congress as to whether the civil legal work of the services could best be handled by the judge advocates or civilian general counsel?

An advisory council would be of great value to the armed services because there is a great deal of civil litigation and procurement now handled by civilian

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lawyers in both the Navy and Army and Department of Defense. Ballantine made a study for the Navy on the office of the general counsel that such an advisory council could and should follow up.

I have taken the liberty of listing these matters at considerable length to show the committee that there is no advisory council created for the same reason that the drafting of this code was not done by such an advisory council. The armed services want a minimum of civilian control, preferably none. I don't blame them. But as former President Herbert Hoover has recently pointed out, the expenditure of money is so great a factor in our total economy there must be more, not less, civilian control. In this instance a citizen army is to be left without informed civilian disinterested advice. Above every other reform, the Congress must insist upon the appointment of a civilian advisory council by the President. If this be done it will not matter whether the proposed uniform code is enacted or defeated. The business will then be in competent disinterested civilian hands and by annual reports and studies the Congress and the Secretary of Defense can correct the serious defects in this present legislation.

2. Unlike the Chamberlain bill of 1920, the present uniform code preserves substantially unimpaired command control of the court-martial system, and it fails to provide the needed impartial judicial review.

The Congress will remember that the Chamberlain bill of 1920, which failed of passage, proposed that command control of courts martial be eliminated in two ways: (1) the convening authority or commanding officer was not to have the right any longer to review the judgment of the court that heard the case; (2) court-martial cases after they were decided by the trial court were to be reviewed automatically before three judges appointed by the President, constituting a court of military appeals and located in the office of the Judge Advocate General. In sharp contrast to the provisions of the Chamberlain bill, the present uniform code preserves intact the review of the convening authority, not only for clemency but also for points of law. And while it does create a judicial council, consisting of three civilian judges and located in the Department of Defense, the right to appeal a court-martial case to this judicial council is badly limited.

Let me take up these matters in more detail:

(a) The code leaves unlimited review in the convening authority that makes the charges and appoints the court.

The convening authority or commanding officer makes the charges against the accused and picks the membership of the court. From the experience of our board in reviewing naval courts martial, I can confidently assert that the principal thing wrong with trials is the fact that the court is so under the domination of the commanding officer that there is no trial at all. It is not so much that innocent men are convicted as that outrageously long sentences are given by the trial court. The convening authority is not a member of the trial court. He does not see the accused or hear the witnesses. Yet the trial court knows that their decision will be reviewed by the convening authority and the line of least resistance for the members of the court is to fix a long sentence and let the convening authority fix the final sentence. This is just the reverse of what should be done. The court under our American system—the court that hears the accused and sees the witnesses—should follow through and fix the sentence, because it is in the best position to do so.

It was the suggestion of Arthur Vanderbilt that this review of the convening authority on law points be eliminated and that the review power be cut down to review for clemency only. It has been the suggestion of the American Bar Association not only that the review be limited to clemency but that the selection of the court be made by the Judge Advocate General and taken away from the convening authority. This suggestion is a good one and I heartily approve it. It was the suggestion of our board that the provisions of the Chamberlain bill of 1920 be followed, and that the review power of the convening authority for either law points or clemency be eliminated entirely (Keeffe Report, pp. 189 to 206). This is for the reason that we thought that under the guise of clemency, a convening authority will actually fix the sentence and the courts appointed by him would continue to give too long sentences, knowing full well that under his clemency power, the convening authority will reduce the sentence to what he thinks it ought to be. The viciousness of this system has always been the fact that not all sentences were reduced as the trial court thought they would be.

The difficulty is that the present uniform code preserves intact (arts. 60–64) the right of the convening authority or the commanding officer to make the charges against the accused, to appoint the court that is to try the accused, and to review the sentence passed by his own appointed court.

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There will never be any improvement in court-martial trial procedure so long as this power remains in the convening authority or commanding officer.

(b) The code preserves an unnecessary and expensive bureaucracy in that boards of review in the offices of the Judge Advocate are unnecessary, wasteful, cumbersome, and undesirable.

The present uniform code not only provides for review by the convening authority or commanding officer but after the case has passed him, it is to be reviewed by boards of review in the offices of the three Judge Advocates General. This seems to me an unnecessary step and a waste of time and money. An efficient review would bring the case directly from the trial court to a court of military appeals such as the Chamberlain bill proposed. The boards of review in the offices of the three Judge Advocates General appointed by him will be subject to his control. You cannot expect such boards of review to give that disinterested impartial review that the Congress desires. Like the trial court, under the domination of the convening authority, the boards of review will be under the domination of the Judge Advocate General. It is equally undesirable. Courts should not be under the domination of anyone. The very creation of these boards of review is most undesirable in that it is proposed to give some cases only a military review before these boards of review. This perpetuates the old mistake of unequal review.

(c) Appeals Under the Code To the Judicial Court Appear To Be For Generals and Admirals Unless You Get Death.

The present uniform code creates a judicial council of three civilian judges, but the difficulty is that the same vice that was present before persists. The great virtue of the Chamberlain bill was that the case of every man was reviewed automatically before a court of judges appointed by the President. This was our suggestion (Keeffe Report, pp. 216–222). There is no reason why the three judges cannot be expanded to five or seven if need be, and all the cases heard automatically by them.

The Congress should realize that over 75 percent of the cases are desertion or a. w. o. l. and there are very few points of law in them. I would think that the officers of the Judge Advocate General's Department would be much more profitably employed in preparing cases for the judicial council. Why give the double review? The time consumed by the convening authority and these boards of review is a waste of time and money. Certainly the work of this court will not be greater than the United States Circuit Courts of Appeals for the Second Circuit of or the United States Court of Appeals for the District of Columbia. If it is to receive the pay and rank of a United States circuit court, it ought to do the work of such a court. I am sure five judges could do it, sitting in panels of three judges as the circuits do. Why not do this? I cannot believe there is any merit in any suggestion that boards of review are necessary to cut down the volume of cases. Our board reviewed over 2,000 naval courts martial from April to September. It can be done adequately by a five judge civilian court if it organizes right and goes to work.

Under the present uniform code, who can be sure who is given an unqualified right to bring his case to the judicial council? Unless you have been sentenced to death, the only ones who are given, under the uniform code, an unqualified right to have their cases reviewed before the judicial council are generals and admirals. I submit that this is contrary to the American system and that everyone regardless of rank should have his case automatically heard before this top civilian judicial council. Here again we see command influence in operation.

(d) The Code Lets the District Attorney (JAG) Decide What Cases To Appeal To The Judicial Council.

The Judge Advocate General is not, and by the nature of his office and appointment, cannot be an impartial judicial officer. He is in as inconsistent a position as a commanding officer or convening authority. He is to enforce discipline and he is to give defense. It is for this reason that the English in their reforms have provided that the Judge Advocate General be a civilian appointed on the recommendation of the Lord Chancelor and be responsible to him.

Significantly, in order to reduce this conflict the English have removed the Judge Advocate General from the control of the Secretaries for State and Air. The committee headed by Justice Lewis declared that the prosecuting and defense sides of the office of the Judge Advocate General's office must be completely separated. This recommendation of the Lewis committee follows and approves the similar recommendation of the prior Oliver committee. And the recommendation has actually been put into effect. See Report of the Army and Air Force Courts-Martial Committee of 1946 published in January 1949, Prefatory Note

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and paragraphs 107 and 109 and 115 to 120. The prosecution seems to be placed under the Adjutant General of the British Army for purposes of discipline and general administration. And the English have under consideration changing the name of their Judge Advocate to "Chief Judge Martial" since in the future his duties are to be purely judicial and his title is "confusing and misleading." See paragraphs 30 and 114 of the Lewis Committee. The English also are considering changing the name of the trial "Judge Advocate." The suggestion is to call the Trial Judge Advocate, the "Judge Martial," or "Deputy Judge Martial." (See par. 197 of the Lewis committee report.) This present reform carries out the program of the Oliver committee appointed when the English Prime Minister was a Conservative.

To all intents and purposes there is no difference between the Judge Advocate General and a district attorney in civilian life. Yet, despite this basic conflict of interests, the uniform code in article 67 (b) (2) provides that the Judge Advocate General may order forward to the Judicial Council for review, such cases as he pleases. This strikes me as very bad. This means that if you are given a death sentence or you are a general or an admiral or you are a man whose case interests the Judge Advocate General, you can have your case appealed to the three civilian judges appointed by the President.

From what I have seen of review of courts martial, I say to you that the time has come when review should be given to every case equally and without depending upon the action of anyone. When national defense is so necessary that we have to have large citizen armies, the least that this Congress can do for the parents of American youth is to see to it that the case of every one of them who is convicted, be reviewed before a top civilian court. I say expand the Judicial Council to five judges and give review to every one alike.

(*e*) The code provision for review by petition is a phony. It is for the wicked and well connected, not for GI Joe.

There is a third way by which a case can be reviewed by the Judicial Council after it has been unnecessarily reviewed by the convening authority and a board of review in the offices of the three judge advocates. Article 67 (b) (3) provides that upon petition of the accused, the Judicial Council can grant a review. I call your attention to the fact that the code significantly does not tell us who is to make this petition. In my short tour of duty with the Navy, I saw the cases of very few defendants that were highly educated men. They were very young men, and in most cases very poorly educated men. They were men who were in trouble largely because of bad home environment. They were the children of divorced parents, and the real poor and neglected in America. These men, if they are to exercise the right to appeal, to file a petition to the Judicial Council, will have to have assistance. The only ones who will not require assistance are the wicked and the well connected. This method of providing an appeal by petition will result in the wrong kind of cases going to the Judicial Council and the right kind being buried in the Board of Review in the office of the Judge Advocate General.

(*f*) The code does not provide for a chief defense counsel.

To be sure that every case is presented to the Judicial Council, it was the suggestion of our board, based on our experience in reviewing the cases, that there should be created a chief defense counsel. (Keeffe Report p. 254). Such an officer, and not the Judge Advocate General, should have the responsibility of appealing cases to the top civilian court. It is too much to expect any Judge Advocate General, no matter how well intentioned and no matter how capable, to act in two capacities like Pooh Bah. It is like asking the district attorney to appeal the case of a defendant that he has convicted. If we have a chief defense counsel appointed by the Secretary of Defense, there is good reason to suppose that the chief defense counsel will present to the civilian court the points that should be presented in the defense of every man convicted by a court martial. If he fails to do so, he has failed to do his specific duty.

(*g*) The code does not insure appeal to the United States Supreme Court for GIs and Gobs.

Furthermore, in our report we called attention to the fact that throughout the war there were no cases appealed to the Supreme Court of the United States with respect to any American boy. It is a curious thing that our highest Court has heard cases with respect to Yamashita, Homma, and the German saboteurs, but not one case—except for the recent Hirshberg case—of an American boy.

In my judgment this is one of the greatest reflections upon the American court-martial system and in my judgment we will never have cases appealed to the Supreme Court of the United States unless we have a chief defense counsel charged

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with the duty of appealing to the Supreme Court of the United States such cases as in his judgment, he deems appealable. It is not that the services are opposed to giving an enlisted man a fair trial. The vice is that the system lodges appeal in the Judge Advocate General. If the system were changed so that a chief defense counsel were charged with this duty, he could be depended upon to do it. I have the highest respect for the officers of the armed services and I know no body of men that can be better trusted to do their duty. However, it might be well to have the chief defense counsel a civilian. Once we change this court-martial system so that a chief defense counsel is created and is free to act, we will see appeals brought to the Supreme Court of the United States from courts-martial convictions as they should be, instead of being buried in the offices of the Judge Advocates General. The convictions that we have read about at Litchfield, the recent convictions that we have read about in the American district in Germany, arising out of the Malmedy massacre (see New York Times for Wednesday, March 2, 1949), indicate that there are cases that should be brought to the Supreme Court of the United States.

In my own experience, we had a group of cases involving alleged rape in the sugar cane in Hawaii which should have been appealed to the Supreme Court of the United States and were not. In fact, the recommendation of Felix Larkin, Esq. and myself that the convictions in those cases be set aside has not yet, so far as I know, been followed, and our request that those cases—in the event conviction was not set aside—be referred for study by a committee of the American Bar Association has not been honored. There were other cases that our board reviewed involving difficult judicial points which should have been reviewed in the Supreme Court of the United States and were not. Mr. Larkin and I made similar recommendations in respect to these and so far as I know, nothing has been done to set aside the sentences. Clemency was extended, but the conviction remains and this is a great injustice. To my way of thinking, a chief defense counsel is an absolute necessity. Along with the creation of such an office should go a change in the outmoded method of appeal of a court-martial case into the Supreme Court of the United States. Such cases cannot be appealed except by filing a writ of habeas corpus in a district court of the United States and appealing from the district court to the circuit and then applying by writ of certiorari to the Supreme Court of the United States. Our board asked this be corrected but nothing has been done so far as I know and this code does not change matters. (Keeffe Report, pp. 251–253.) The least that should be done is to give the chief defense counsel the right to appeal to the United States Court of Appeals for the District of Columbia or directly to the Supreme Court of the United States by certiorari.

(*h*) Having sabotaged the judicial council in limiting its right to hear appeals in every case, the code completes the job by limiting it to points of law only.

Another difficulty in the judicial council, as set up on the present code, is the fact that the judicial council can review only matters of law. The experience of the Army with its boards of review has been very bad. It has been difficult if not impossible to tell what is a question of fact and what is a question of law. The result is that review by the boards of review of the Army has been particularly criticized. The present code permits an unlimited review before the boards of review, but in creating the new judicial council, it perpetuates the vice that was present in the old Army boards of review. It imits the judicial council to review questions of law and chains the judicial council to the facts as found by command. This is not the kind of civilian review that we ought to have. We reviewed cases where we thought that confessions had been extorted from the accused by torture. Is the obtaining of a confession by extortion a question of fact or a question of law? Cases of that sort are bound to be difficult to review and the statute should be drawn so that the judicial council has an unlimited right to review questions of fact as well as questions of law. (See article by Samuel Morgan, December 1946 Atlantic Monthly and Keeffe Rept., pp. 226–227.)

3. The only hope for real reform of courts martial is to create an advisory council.

From what I have said, it seems clear to me that there is no hope for an adequate thoroughgoing reform of the court-martial system unless a permanent advisory council is created as suggested by our board (Keeffe Rept., pp. 2–5, introduction) and the American Bar Association.

The hope of those in the armed services who oppose reform is that those of us who are informed and interested will lose interest and tire out. It is a severe personal sacrifice for busy lawyers and busy men to take the time that is necessary to present the civilian point of view on reform to the Congress. The Congress

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should recognize that we are a scattered group and the matter should not be left in this way. The American Bar Association proposes, in line with the suggestion of our board, that there be a permanent independent advisory council of lawyers appointed by the President. Over and above every other reform, I again urge upon you the importance of creating this advisory council so that the disinterested opinion of men like Vanderbilt and McGuire and the rest can be brought to your attention.

Respectfully submitted.

ARTHUR JOHN KEEFFE.

NOTE

I call the attention of the committee to article 106 of the uniform code under which as I read it "any person in time of war" becomes subject to court martial. Article 106 applies by its terms to "any person" who is "in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in and of the prosecution of the war by the United States." Unless this is not "time of war" as meant by article 106, it would take effect today on enactment. In any event during the last war it would be difficult, it seems, to find anyone in the United States not subject to this broad and dangerous language. With double jeopardy the vogue then, most civilians in wartime would be subject to both civil trial and court martial. This language should be torn out by the roots.

Mr. SMART. Justice McGuire has forwarded his recommendations to the committee and you will find that they are included in the list of questions which I have prepared for you.

Mr. BROOKS. Now, Mr. Smart, I would like to ask you this question: Have the services indicated whether they desire to designate someone here during the reading of the bill and if so who do they want to have present?

Mr. SMART. I think this is the situation which we should understand, Mr. Chairman. This bill comes here from the National Military Establishment. You will recall that Mr. Forrestal, the Secretary of Defense, appointed the committee which has prepared this bill so that as far as we now know it represents, in the main, the complete agreement of all the services.

As I have previously indicated there are points of difference, which Mr. Larkin will point out during the hearings, and on which departmental witnesses should and must be heard. So far as representation is concerned, the Navy is represented today by their Judge Advocate General, the Air Force is represented by Colonel Maxey who sat with the working group, and the Army is represented by Colonel Dinsmore who likewise sat with the working group.

In addition, the Navy representative, Col. John Curry of the Marine Corps, represented the Navy during the working group consideration and he is here. So I think you have a very good representation of the three services here today, in the event you want to question them.

Mr. BROOKS. Since that is the case, I think it would be appropriate for the committee to go into executive session in reading the bill section by section. And we want the representatives of the services as indicated to be present for that purpose.

Mr. SMART. May we go off the record.

Mr. BROOKS. Yes, off the record.

(Discussion off the record.)

Mr. BROOKS. It has been pointed out that there is no fundamental need for an executive session, so we will just proceed to read the bill without an executive session. I think that is much better.

Mr. ANDERSON. Mr. Chairman, is it your plan now to start with the reading of the bill?

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Mr. BROOKS. Yes.

Mr. ANDERSON. I had three or four questions here I wanted to ask Mr. Larkin or Professor Morgan.

Mr. BROOKS. Mr. Smart tells me Professor Morgan will be back. And he especially wants to be heard on certain particular articles. If there is no objection we will start reading the bill, and I will ask Mr. Smart, if he will, to read article 1, following which we will take up the disputed portions and interrogate any witness we want, and then pass on to the next one.

Mr. SMART. Mr. Larkin has a question, sir.

Mr. LARKIN. Not a question, Mr. Chairman, but before we start with the reading there are one or two things I would like to bring to your attention which I think might be helpful in connection with the reading of the bill.

We have available for the members of the committee a staff study which was prepared for the Military Justice Committee. In view of the diverse number of views you have heard on every article from the various witnesses who appeared, you may desire to do a little additional research of your own and in that connection I think this study which the staff of the committee that drafted the Uniform Code had before it and considered might be very helpful.

This study was not prepared for publication, and it has not been edited for publication, and occasionally you will find in the different briefs questions raised which subsequently are answered in the code. But it is the only complete study on a comparative basis.

Mr. BROOKS. Do you have some of them available here?

Mr. LARKIN. Yes.

Mr. BROOKS. Suppose you give them to Mr. Smart for distribution to the members of the committee.

Mr. LARKIN. Yes, that is a comparative study of the Articles of War, and the Articles for the Government of the Navy with an explanation in each case of the differences. This study was completed before the committee started its deliberations. They had it before them and it gave them all the pertinent information on each and every point that we could find, showing the differences and the problems involved, the suggestions and recommendations that had been made by various groups, and in each instance it pointed out the change that had been made in the Articles of War by the Elston bill.

So it is a fairly complete reference work. And as I say, if you care to go to sources on any one point, it will be particularly helpful to you, I am sure.

Mr. SMART. I would like to say, Mr. Chairman, I think the committee will find an additional presentation of the code which I will now issue to each of the members, very helpful throughout these hearings because at the close of each article and section of the bill it includes a notation showing you exactly where that article or section came from, the particular article of war, the particular article for the government of the Navy, and following that you will find comments as to the attitude of the working group and also the policy group.

I think, rather than to use this large reference, to which Mr. Larkin refers, unless you have some very knotty problem, it will be much better to use a copy of the bill as to page and line and follow it in this other document which I will distribute.

Mr. LARKIN. If you will indulge me 1 more minute, Mr. Chairman, I would like to acknowledge on behalf of the National Military Estab-

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lishment and our office particularly for the record the debt that we owe Mr. Smart, your extremely capable professional member.

As you know, Mr. Smart sacrificed a great deal of his time, I think his vacation too, to join in the daily debate we had all last summer and all last fall on this whole subject. His advice and counsel was invaluable to us throughout our whole deliberations.

I point out this: None of the errors or mistakes you may find in the code are Mr. Smart's. They are all ours.

Mr. SMART. Mr. Chairman, I think it well to keep the record exactly straight on this point. I appreciate the kind things Mr. Larkin has said. You will probably remember that Mr. Forrestal extended me an invitation to sit as an observer with his committee.

Our committee granted me that permission. I sat solely as an observer and with the frank understanding that I was in a position to criticize any word, every word, every line, and every article of the bill after it got here.

I merely sat in an effort to be helpful if I could be, and I hope that I was.

Mr. BROOKS. Now, Mr. Smart, the committee knows that you were there and sat in on every portion of the writing of this proposed law. Would you rather make a statement, that is a general statement, in reference to your studies or would you prefer to do it section by section?

Mr. SMART. I think whatever assistance I can give the committee, Mr. Chairman, would be far more effective on a section by section consideration of the bill rather than by a general statement. I think you have heard all the general statements you want. It is time to get down to business now.

STATEMENT OF FELIX LARKIN, ASSISTANT GENERAL COUNCIL, OFFICE OF THE SECRETARY OF DEFENSE

Mr. LARKIN. For the record, Mr. Chairman, my name is Felix Larkin. I am the Assistant General Counsel in the Office of the Secretary of Defense. I served as executive secretary to the committee on the Uniform Code of Military Justice and was chairman of the working group that did the initial studies and developed this comparative study and the various other information we have here for you.

Mr. BROOKS. I would think, Mr. Larkin, again, in reference to you, that the committee would rather proceed with the section by section discussion of the bill.

Mr. LARKIN. Yes.

Mr. BROOKS. Since they have received so many general statements already. But I know of your work, too, in reference to the bill and we certainly want to hear from you on every critical point.

Mr. LARKIN. I think the most efficient way and the most expeditious way is just go through it section by section, as you suggest.

Mr. BROOKS. All right.

Now do you have the analysis, Mr. Smart, that you referred to yesterday?

Mr. SMART. That is it. The typewritten document which is before you.

With your permission, Mr. Chairman, I am ready to start with article 1 of the bill.

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Mr. BROOKS. All right, sir. Just proceed.

Mr. SMART (reading):

ARTICLE 1. Definitions.

The following terms when used in this code shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

(1) "Department" shall be construed to refer, severally, to the Department of the Army, the Department of the Navy, the Department of the Air Force, and, except when the Coast Guard is operating as a part of the Navy, the Treasury Department;

(2) "Armed force" shall be construed to refer, severally, to the Army, the Navy, the Air Force, and, except when operating as a part of the Navy, the Coast Guard;

(3) "Navy" shall be construed to include the Marine Corps and, when operating as a part of the Navy, the Coast Guard;

(4) "The Judge Advocate General" shall be construed to refer, severally, to The Judge Advocates General of the Army, Navy, and Air Force, and, except when the Coast Guard is operating as a part of the Navy, the General Counsel of the Treasury Department;

(5) "Officer" shall be construed to refer to a commissioned officer including a commissioned warrant officer;

(6) "Superior officer" shall be construed to refer to an officer superior in rank or command;

(7) "Cadet" shall be construed to refer to a cadet of the United States Military Academy or of the United States Coast Guard Academy;

(8) "Midshipman" shall be construed to refer to a midshipman at the United States Naval Academy and any other midshipman on active duty in the naval service;

(9) "Enlisted person" shall be construed to refer to any person who is serving in an enlisted grade in any armed force;

(10) "Military" shall be construed to refer to any or all of the armed forces;

(11) "Accuser" shall be construed to refer to a person who signs and swears to the charges and to any other person who has an interest other than an official interest in the prosecution of the accused;

(12) "Law officer" shall be construed to refer to an official of a general court martial detailed in accordance with article 26;

(13) "Law specialist" shall be construed to refer to an officer of the Navy or Coast Guard designated for special duty (law);

(14) "Legal officer" shall be construed to refer to any officer in the Navy or Coast Guard designated to perform legal duties for a command.

References: first article of war; title 1, United States Code, section 1 (1946) (words imparting singular number, masculine gender); N. C. and B., appendix B–73.

Commentary: The definitions in this article pertain only to this code. In the interest of economy of draftsmanship certain words, such as "The Judge Advocate General," have been given special meanings.

For the purpose of this code the Marine Corps and, when operating as part of the Navy, the Coast Guard, are considered part of the naval armed force. The term armed force includes all components.

A provision as to masculine and feminine gender is unnecessary in light of title I United States Code, section 1.

Mr. BROOKS. Do you want to make any comment on that, Mr. Larkin?

Mr. LARKIN. I think this general comment should be brought to your attention: These definitions are designed for this code alone. They are not to be understood to apply to these terms in other aspects or for other military purposes. For instance, the definition of "judge advocate" is not a full description or definition of just what the judge advocate is, but for the purposes of this code we have adopted this definition.

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So I think you ought to bear in mind that the construction is for the purposes of understanding these terms when they appear in the code for the purposes of military justice and not for all purposes.

Mr. ELSTON. Do you not think maybe it would be a good idea, Mr. Larkin, to begin your article 1 with the words "for the purposes of this code the following terms when used in this term should be construed," and so forth?

Mr. LARKIN. I think we have the same effect, Mr. Elston, by our commentary. Incidentally, I would like to offer it for the record and I would like to offer it each time we discuss an article.

I think it will supplement the testimony we have had on all the articles and will make for a much fuller legislative history on the specific and intended meaning of each provision. And by putting in the record the reference and the commentary we will have a legislative history which will make it very much easier for the drafters of the manual if this bill ever becomes law.

Now, if you will notice under the commentary of article I the notion I just mentioned is contained. I will read the first paragraph: "The definitions in this article pertain only to this code. In the interest of economy of draftsmanship certain words, such as 'the Judge Advocate General,' have been given special meanings."

It was for the purposes of economy rather than having to insert additional language here and in each and every place throughout the code, that definitions of this type were used.

For instance, an example would be wherever we speak of the judge advocate we intended to mean the general counsel of the Treasury for the purposes of the Coast Guard in time of peace. Instead of repeating time and time again the full, complete coverage of the word it makes for economy in draftsmanship if we just define it. So I think it is unnecessary.

Mr. BROOKS. Your commentary refers to the fact that the Marine Corps, which operates as a part of the Navy, and the Coast Guard are considered part of the naval armed force.

Mr. LARKIN. Yes.

Mr. BROOKS. But that is in time of war.

Mr. LARKIN. Insofar as the Coast Guard is concerned?

Mr. BROOKS. Yes, insofar as the Coast Guard is concerned.

Mr. LARKIN. That is right.

Mr. BROOKS. What about in time of peace?

Mr. LARKIN. In times of peace, the Coast Guard by the terms of this code will operate under this code. That is something that I do not think has been clearly brought out here. The present situation as you know is that in time of war when operating with the Navy the Coast Guard are under the Articles for the Government of the Navy.

However, in peacetime they have their own disciplinary laws which are a substitute for the Articles for the Government of the Navy.

Now we were conscious of that difference. We were also conscious of the fact that the Coast Guard at the present time has recodified their organic legislation and it is before the Committee on Merchant Marine and Fisheries, I think, for consideration.

In that recodification they were also recodifying the disciplinary laws that apply to them in peacetime.

Since we are trying to provide a code that was as uniform as possible we were anxious to have the Coast Guard come in under it and not

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have them still remaining in peacetime under separate disciplinary laws.

For that reason the Coast Guard was invited to join our deliberations and they sent a representative. He sat in throughout our working group hearings. It is provided here that the Coast Guard in time of peace and war is subject to this code and they freely consent and join in the support of it.

So the effect of this code is not only does it cover the Army, Navy, and Air Force and the Coast Guard in time of war, but in time of peace as well. So there is now one military justice system for all of the armed forces in peacetime and in war.

Mr. ELSTON. At the outset I would like to ask Mr. Larkin this question: Did your committee take into consideration the recommendations of the Hoover Commission insofar as the services are concerned, to see whether or not the enactment of this bill might in some manner conflict with some subsequent legislation that Congress may enact to carry the provisions of the Hoover report into effect?

Mr. LARKIN. The Hoover report had not been released during most of our deliberations and it was not until the very end that we had some of those task force reports. We did consider it—not very carefully because the possibility of those recommendations being enacted by the Congress are speculative as are all other proposed changes.

But as far as we can see this code would not interfere with proposed changes in the National Security Act or would not be inconsistent with them.

Mr. BROOKS. Of course, even if the recommendations of the Hoover Report which were made yesterday regarding the Army engineers were put into effect, they could still come within the provisions of this title.

Mr. LARKIN. Yes, sir.

Mr. SMART. That is right.

Mr. ANDERSON. Mr. Chairman, I was not present, unfortunately when Mr. Spiegelberg testified the other day, but I think he furnished each member of the committee with a letter and his recommendations. I note that he had a recommendation for two additional definitions in article 1. Do you have any comment, Mr. Smart, on that?

Mr. SMART. May I say this, Mr. Anderson, in regard to that inquiry. Mr. Spiegelberg's criticism of the bill goes to the present method for selection of courts. That begins with article 22 of this bill.

In other words, if the committee should decide to amend article 22 in accordance with his recommendation, then it will be necessary to come back to article 1 and insert those. But until we get to article 22 that is not a matter of issue.

Mr. ANDERSON. I see. Thank you.

Mr. BROOKS. Now reference was made the other day, too, to subsection 11, in reference to the wording of that subsection regarding the meaning of the word "accuser." Does anyone care to make any comment on that?

Mr. LARKIN. I might supply this information on that, Mr. Chairman. When we studied the Navy and Army systems we found a difference in the manner of preferring charges and specifications. That is provided in the later articles of the code which we will come to as we read the code.

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But by virtue of the difference in the two procedures the standard definition of an accuser as heretofore employed by the Army might well have caused or resulted in this incongruous situation, that the Navy commander who convened the court would have been disqualified by virtue of the definition.

In other words, the definition substantially is that anyone who prefers charges is ineligible to appoint the court or sit as a member of it. Now the Navy system did not heretofore have a preferring of charges initially as the Army system did. The preferring of charges took place after the investigation was concluded.

And the preferring or refering of charges and the convening of the court was a simultaneous action. Now under the strict definition of accuser we were afraid there might be a possibility that the Navy commander could not have, by virtue of the official signing of the charges themselves, qualification. He would have been disqualified by virtue of being a technical accuser.

So for that reason we have changed it around a little bit. But the complaint in this connection was that a commander who was disqualified could order a subordinate to prefer the charges. Well, that I think overlooks a present regulation providing that no commander can order any subordinate to prefer charges at all.

The persons who prefer the charges or refer them to trial and appoint courts are required to do so on their own initiative and on their own independent judgment and not at the order of anybody else and this definition does not change that at all. I do not have any fears on that score.

Mr. BROOKS. Mr. Smart, do you have a comment?

Mr. SMART. I want to state to the chairman that Admiral Russell, the Judge Advocate General of the Navy, has a comment.

Mr. BROOKS. Admiral Russell, do you have a comment on that?

Admiral RUSSELL. Yes, sir. I think subsection 11 relates to article 30. I would suggest that it be left or marked when we take up that article, for this reason: I have a feeling that we are confusing pleading with what might be termed a complaint. We do not want to get somebody into the business of pleading who is not competent to draw up exchanges and specifications.

Mr. BROOKS. If there is no objection, we will wait until we reach article 30. Are there any further questions regarding this article?

Admiral RUSSELL. I have one more comment to make, sir, for the record.

Mr. BROOKS. All right, Admiral.

Admiral RUSSELL. Under the existing law the Coast Guard operates as a part of the Navy in time of war or when the President shall so direct. In other words, it is not quite accurate to say that they are never a part of the Navy in time of peace. Actually they became a part of the Navy before we went to war, in World War II.

Mr. ANDERSON. Do you think that would require a change in one of these definitions?

Admiral RUSSELL. No, sir.

Mr. SMART. No.

Mr. BROOKS. They still come within the terms of the code, as I understand it, regardless of whether they are actually in the Navy or under the Treasury Department as presently written?

Admiral RUSSELL. Yes.

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Mr. SMART. That is correct, Mr. Chairman. In time of war or at the direction of the President they are attached to the Navy.

Mr. BROOKS. Yes.

Mr. SMART. They will then follow the Navy jurisdiction and will follow the same code.

Mr. BROOKS. But will still be governed by the same, identical rules?

Mr. SMART. That is right. But in peacetime instead of being under Navy courts-martial jurisdiction, or when not ordered attached to the Navy by the President, they will try their own cases with Coast Guard personnel under this same code, whereas today if the Coast Guard has a serious offense of any type it must refer the case to the civilian authorities, to the Federal court and district attorney, and then worry with it for months to see whether or not the fellow gets tried.

Mr. BROOKS. What about the appellate jurisdiction? Would it be the same as under this code?

Mr. SMART. Under this code, in peacetime, it goes right on up through the judicial council to the Secretary of the Treasury, and, if necessary, to the President.

Mr. DEGRAFFENRIED. Mr. Smart, did I understand you to say that right now that the Coast Guard, when it is not attached to the Navy, has no method of courts-martial of its own?

Mr. SMART. That is not exactly the case, Mr. deGraffenried. They do have a method of procedure. Title 14 United States Code provides they will substantially follow the Articles for the Government of the Navy for procedure. But when they have a serious case—murder or rape or something of that character—then they will turn that case over to the Federal district court. Then it is a matter of indictment and following it through through civilian channels completely apart from the Coast Guard, which by statute, (14 U. S. C. 1) is defined as a military service.

Mr. DEGRAFFENRIED. They have no method of their own to handle serious cases?

Mr. SMART. That is correct, as of today.

Mr. BROOKS. Any further questions?

Mr. HARDY. To what extent, then, or will it to any extent, will this legislation bring the Coast Guard under the jurisdiction of the Department of Defense with respect to justice?

Mr. LARKIN. During peacetime they will not be under the Department of Defense, except that their cases will be appealable to the judicial council in the same way as the cases of Army, Navy and Air Force.

They will have their own courts with their own personnel. They will have their own board of review. The Secretary of the Treasury will have the same function as the Departmental Secretaries.

Their general counsel will have the same function as the judge advocate general have for their own purposes. But they are keyed in through the judicial council which is this independent tribunal.

Mr. HARDY. So under the final review there would be some tie-in with the Department of Defense?

Mr. LARKIN. Yes, sir.

Mr. HARDY. Even though the Coast Guard is under the Treasury Department?

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Mr. LARKIN. Yes, sir.

Mr. SMART. That is right.

Mr. ELSTON. I notice in some bills we have referred specifically to the Geodetic Survey. Is that necessary here?

Mr. LARKIN. That is in article 2, Mr. Elston.

Mr. BROOKS. Well, Mr. Elston, if I may, I would like to ask another question on the Coast Guard before we get to the Geodetic Survey. Would that be all right with you?

Mr. ELSTON. Oh, persons subject to the code, it is in article 2, you mean?

Mr. LARKIN. Yes. It is in article 2, subdivision 8.

Mr. BROOKS. Mr. Larkin, in further reference to the Coast Guard, as I understand it, this code is so adapted that the Coast Guard will fit under it for procedure and for trials and for substantive right and definition of crimes and everything else necessary to try cases and administer justice, even in times of peace?

Mr. LARKIN. That is exactly right, Mr. Chairman.

Mr. Elston?

Mr. ELSTON. That is all. He answered my question.

Mr. SMART. I would like to ask one question, while we are still on article 1. I do not know that everyone understands the distinction between a commissioned warrant officer in relation to the usual type of warrant officer. That is presented in subsection 5 of article 1:

An officer shall be construed to refer to a commissioned officer including a commissioned warrant officer.

For purposes of understanding, I think that ought to be clarified.

Mr. LARKIN. The purpose of that definition, as distinguished from the definition on enlisted man in subdivision 9, is to clarify these ranks and grades for the purpose of eligibility on the courts which is found in article 25.

In view of the fact that there is provision for enlisted men, as well as officers and warrant officers and commissioned warrant officers to sit on courts we have made the distinction. Heretofore, before the Elston bill, for the Army and at the present time for the Navy, of course only officers are eligible to sit on courts-martial. Now the provision covers all services and for that purpose we thought it necessary to make the distinction.

Now the point is that we have included commissioned warrant officers because there is such a commission in the Navy where there are no commissioned warrant officers in the Army.

Mr. SMART. Or Air Force.

Mr. LARKIN. Or Air Force, for that matter.

The Navy has both a commissioned and a noncommissioned warrant officer and we wanted to make it clear that when you are talking about warrant officers a distinction is to be borne in mind and that the commissioned warrant officer is in the same classification as an officer.

Mr. BROOKS. That draws a line, then.

Mr. LARKIN. That is right.

Mr. BROOKS. Noncommissioned warrant officers would be enlisted men under this definition?

Mr. LARKIN. Well, they would not be enlisted men because they are something over and above enlisted men in that they have a warrant. They may originally have been one. However, they are not an officer, you see, not a commissioned officer.

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Mr. BROOKS. Not a commissioned officer.

Mr. LARKIN. They are the type of personnel with a warrant.

Mr. BROOKS. Any further questions on the definition? If not, we will proceed with article 2.

Mr. SMART (reading):

ART. 2. Persons subject to the code.

The following persons are subject to this code:

(1) All persons belonging to a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; all volunteers and inductees, from the dates of their muster or acceptance into the armed forces of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty in or for training in, the armed forces, from the dates they are required by the terms of the call, draft, or order to obey the same;

(2) Cadets, aviation cadets, and midshipment;

(3) Reserve personnel who are voluntarily on inactive duty training authorized by written orders;

(4) Retired personnel of a register component of the armed forces who are entitled to receive pay;

(5) Retired personnel of a reserve component who are receiving hospital benefits from an armed force;

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve;

(7) All persons in custody of the armed forces serving a sentence imposed by a court-martial;

(8) Personnel of the Coast and Geodetic Surey, Public Health Service, and other organizations, when serving with the armed forces of the United States;

(9) Prisoners of war in custody of the armed forces;

(10) In time of war, all persons serving with or accompanying an armed force in the field;

(11) All persons serving with, employed by, accompanying, or under the supervision of the armed forces without the continental limits of the United States and the following Territories: that part of Alaska east of longitude 172° W., the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands;

(12) All persons within an area leased by the United States which is under the control of the Secretary of a Department and which is without the continental limits of the United States and the following Territories: that part of Alaska east of longitude 172° W., the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands.

References: Second article of war; proposed A. G. N., article 5 (a); Revised Statute, section 1256 (1875), 10 U. S. C., section 1023 (1946), (retired Army officers); 40 Stat. 87 (1917), 33 U. S. C. section 855 (1946), (Coast and Geodetic Survey); Revised Statutes, section 1457 (1875), 34 U. S. C. section 389 (1946), (retired naval officers); 52 Stat. 1180 (1938), 34 U. S. C., section 855 (1946), (Naval Reserves); 52 Stat. 1176 (1938), 34 U. S. C., section 853d (1946), (Fleet Reserve and Retired Reserves); 57 Stat. 41 (1943), 34 U. S. C., section 1201 (1946), (nonmilitary persons outside of the United States); 58 Stat. 690 (1944), 42 U. S. C., section 217 (1946), (Public Health Service.)

Commentary:

Paragraph (1) is an adaptation of A. W. 2 (a). The term "inductees" has been added to make the paragraph consistent with section 12 of Public Law 759, Selective Service Act of 1948, Eightieth Congress, second session (June 24, 1948), which provides:

> No person shall be tried by court martial in any case arising under this title unless such person has been actually inducted for training and service prescribed under this title * * *.

Paragraph (2) is an adaptation of A. W. 2 (b). See article 1 for definitions of "cadet" and "midshipman."

Paragraph (3) is adapted from 34 U. S. C., section 855. The requirement that there be written orders is added for two reasons.

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First, the applicability of this code to personnel on inactive-duty training is desirable only with respect to certain types of training, such as week-end flight training, and the written orders will be used to distinguish the types. Secondly, the orders will be notice to the personnel concerned.

Paragraphs (4) and (5) have their sources in 10 U. S. C. section 1023 and 34 U. S. C., sections 389, 853d. The power of the Navy over Retired Reserves has been reduced.

Paragraph (6) is the present law. See 34 U. S. C. section 853d.

Paragraph (7) is a slight modification of A. W. 2 (e). It follows article 5 (a) of the proposed A. G. N. by limiting applicability to those persons who are in custody of the armed forces.

Paragraph (8) is drawn from 33 U. S. C. section 855 and 42 U. S. C. section 217.

Paragraph (9) is consistent with articles 45 and 64 of the Geneva Convention on Prisoners of War (47 Stat. 2046, 2052, (July 27 1929) in that the prisoners of war are subject to this code and thereby have the same right of appeal as members of the armed forces.

Paragraph (10) is taken from A. W. 2 (d). The phrase "in the field" has been construed to refer to any place, whether on land or water, apart from permanent contonments or fortifications, where military operations are being conducted. See In Re Berue (54 F. Supp. 252, 255 (S. D. Ohio 1944)).

Paragraphs (11) and (12) are adapted from 34 U. S. C. section 1201, but are applicable in time of peace as well as war. Paragraph (11) is somewhat broader in scope than A. W. 2 (d) in that the code is made applicable to persons employed by or under the supervision of the armed forces as well as those serving with or accompanying the same and the Territorial limitations during peacetime have been reduced to include territories where a civil court system is not readily available.

Personnel of the Coast Guard are subject to this code at all times as members of an armed force.

Mr. BROOKS. Now, Mr. Larkin, we will be glad to have your comments on this article, which I think calls for considerable explanation.

Mr. LARKIN. May we take them up numerically—these subdivisions?

In Subdivision 1, in general, we have provided for jurisdiction over persons in the Regular components, which is a continuation of the present jurisdiction. The second part of that paragraph, after the first semicolon, provides for the jurisdiction of volunteers and inductees, that is, people who either volunteer for service or are drafted by the selective service law.

And in the third segment of that paragraph, after the second semicolon, we provide for all other classes.

Now there has been a considerable amount of comment by the various witnesses. The first comment I think we should consider is the question of when volunteers or inductees become subject to the jurisdiction of the code.

I think there has been a misreading of this by a number of witnesses, particularly those who say that draftees become subject to the jurisdiction from the dates they are required by the terms of the call, draft, or order to obey the same. That is not our intention and I do not believe it is justified from the language.

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There was some doubt in the previous Article of War—Article of War 2 which covered this same subject as to when inductees were subject to the Articles of War. Generally I think this latter part has been construed as the time when they are sworn in or mustered in. However, it has also been construed as the time when a man starts his traveling to report for service.

The Selective Service Act of last year specifically provided that as to these draftees, jurisdiction over them shall not arise until they are actually inducted. We have adopted that provision and the practice will continue under this code of trying people who are called or drafted but who do not report and become draft dodgers by the Federal courts. The military will not have jurisdiction over them until they are inducted.

Mr. BROOKS. When you use the term inducted, you mean swearing in, do you not?

Mr. LARKIN. Well, when they are sworn in and are available for service. We have done that, if you will follow me, by inserting in the second segment here the word "inductees." Heretofore the Article of War read:

> All volunteers from the dates of their muster or acceptance into the armed services.

It did not say inductees, but the Selective Service Act—and we have made a reference to that in our commentary if you look at it—provided that—

> no person shall be tried by courts martial in any case arising under this title unless such person has been actually inducted for training and service prescribed under this title.

Now that clearly postponed the jurisdiction until they were actually inducted or mustered in. And we amended the Article of War 2 by putting inductees in there, in that second section, and by our commentary show that it is our intention that we follow the Selective Service Act in that connection.

Mr. BROOKS. What, then, does that concluding clause in that sentence say?

Mr. LARKIN. Now, the concluding clause in the sentence says all other than those drafted under the Selective Service Act. As to the calling in or perhaps the drafting in of the Reserves to active duty—the National Guard and any other organizations which may be called to active duty, as to them since they are already members on inactive duty and already have been sworn in, why the jurisdiction will arise from the dates they are required to obey them—I think the construction there would be when they actually report for duty or perhaps when they leave their home on their way to report for duty.

But you see that covers and is intended to cover this other class or other classes who in some fashion are connected with the military already or are on inactive duty or are a military group of some kind like the National Guard who became federalized.

Mr. HARDY. Do you not get a little confusion there by the use of the word ' inductees" in one place and the word "drafted" in the other?

Mr. LARKIN. Well——

Mr. HARDY. It looks like you might be talking about the same group of people.

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Mr. LARKIN. Yes. Well, I think our commentary spells it out. And this language here—the inclusion of the word "drafted"—has been in the Articles of War for many years. It does cover the situation where some of these other groups are called in or ordered to or are perhaps considered to be drafted—not under selective service, but nevertheless drafted in some fashion.

Mr. HARDY. In other words, purely from a reading of this thing you could interpret that latter part to refer to selective-service inductees or draftees or whatever you want to call them?

Mr. LARKIN. I think you would be stretching it a little bit, Mr. Hardy, because we started by saying "all other persons," all other than inductees, and it is used——

Mr. HARDY. Do you define "inductees" to mean only people that are taken under the Selective Service Act?

Mr. LARKIN. That is right.

Mr. HARDY. Your commentary is the only thing that I see here that would indicate to me that an inductee under the Selective Service Act could not be included in the latter part of your phraseology.

Mr. LARKIN. Well, the Selective Service Act itself of course provides that. And, as I say, this is an attempt on our part to adopt it and to leave, in other words, the inductees or the people who are called for examination and screening and so forth by the draft boards, to the Federal courts.

Mr. HARDY. That is just the point I am talking about. Of course the usage is the thing I am thinking about and not the technical terms used in the Selective Service Act.

Mr. BROOKS. Would it be a good idea to include at this point in the record the reference to the Selective Service Act?

Mr. LARKIN. I think it does become included if you will make a part of the record the commentary in connection with this code because if you will note the first paragraph of the commentary spells out the idea I have just expressed.

Mr. BROOKS. Let me ask you another question. When you come down to the last clause, when the National Guard is federalized, do they not take an oath and are formally inducted?

Mr. LARKIN. May I ask Colonel Dinsmore, do you know the facts?

Colonel DINSMORE. I do not, Mr. Chairman. I am sorry.

Mr. BROOKS. My recollection was, the last time we federalized them, they were required to take an oath.

Colonel DINSMORE. I suppose that is undoubtedly true. I will give you a definite answer on that.

Mr. BROOKS. All right, sir.

Mr. LARKIN. Do you know, Colonel Maxey?

Colonel MAXEY. I think I can answer only so far as officers are concerned. They do take an oath in the federally recognized National Guard as well as in the State National Guard. They are called to duty as National Guard officers. Now as to the enlisted personnel I cannot answer.

Mr. BROOKS. Do they do that initially or do they do that when they are called into active Federal service?

Colonel MAXEY. Initially.

Mr. BROOKS. Initially?

Colonel MAXEY. Yes, sir.

Mr. SMART. May I ask a question?

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Mr. BROOKS. Mr. Smart.

Mr. SMART. I would like to take the case of a Reserve officer on inactive duty who gets an order to report to duty and he refuses to abide by the order. Is he triable by this code or in the Federal court?

Mr. LARKIN. I think you have to distinguish that between a call in peacetime and a call in time of emergency or war.

Mr. SMART. Let us assume that it is wartime.

Mr. LARKIN. In wartime, I think he comes under this code. Is that right? [To Colonel Maxey.]

Mr. HARDY. I do not see how you can arrive at any other conclusion than that he comes under it at any time, from the wording of this last paragraph.

Colonel MAXEY. May I make one observation. In time of peace he can only be called for a period of 15 days or less without his consent. Therefore, if he is lawfully called, he is subject to the code and the code so states.

Mr. HARDY. That is right. He comes under this thing as soon as the call is issued.

Mr. SMART. I think the point to bear in mind is that he is voluntarily accepting a Reserve commission and when he accepts that he accepts the obligations that go with that. So he knows that he can be called for 15 days in time of peace and if he refuses to obey the commission which he has voluntarily accepted perhaps he should be subject.

Mr. HARDY. There is no argument about that. But certainly, the way this thing reads—and I am not arguing as to whether that should or should not be—if he gets a call for 15 days or whatever it is he is under the terms of this code from the time that he is supposed to appear according to his orders, as I read it.

Mr. LARKIN. That is right.

Mr. SMART. Well, assuming that to be true, I think the general opinion is that that is as it should be.

Mr. HARDY. That is all right with me. I have no argument about that.

Mr. SMART. I just wanted to clarify that point, though, for the record, so there would be no misunderstanding about that.

Mr. HARDY. I am still not happy about the use of the word "drafted" in one place and "inductees" in another. I do not think your commentary clears that thing up sufficiently for my purposes.

Mr. ANDERSON. Well, is there any specific example you can give the committee of an instance where a person might be drafted into service other than being inducted under the terms of the provisions of the Selective Service Act?

Mr. LARKIN. Not being a member of the Reserve or the National Guard or any other Reserve outfit. I do not know of any other way.

Mr. DE GRAFFENRIED. That last section is just a little bit confusing to my mind, that is those last few lines there. There is a conflict there, in the last four lines, with what you said just before that:

All volunteers and inductees, from the dates of their muster or acceptance into the armed forces of the United States.

Mr. ANDERSON. I think Admiral Russell has something to offer.

Admiral RUSSELL. I was wondering whether it would meet Mr. Hardy's suggestion to strike out the words "drafted" and "draft."

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Mr. BROOKS. So it would read—

persons lawfully called or ordered into, or to duty in or for training in the armed services.

Mr. HARDY. Then that would clear up the confusion in my mind.

Admiral RUSSELL. If you take out the word "drafted", then you would automatically take out the word "draft" in the last line.

Mr. HARDY. Yes.

Mr. LARKIN. Before you make up your mind on that, I would like to ask Colonel Dinsmore if he feels that will cause any difficulty. You see the words "drafted" and "draft" have been in the articles for a long time and they were kept in again of course in the Elston Act, in the amendment to section 2 as provided in Public Law 75.

You can see that incidentally in this big book, if you would like to look at it, under tab 2, page 3.

Do you think it will cause any confusion, Colonel?

Colonel DINSMORE. Mr. Chairman, we discussed that at some length in the working group, and I am frank to say that I can think of no case in which the word "drafted" would be necessary in this article.

We put it in as I recall it because it had been in the Articles of War for a great many years and no doubt had been useful and we were afraid if we left it out that we might be omitting something that was useful

Mr. BROOKS. Colonel, could I ask you this question: Would it be preferable just simply to add after the word "inductees" in section 1 so that it would read: "Inductees under Selective Service"?

Colonel DINSMORE. I see no objection to that, Mr. Chairman.

Mr. BROOKS. Which do you think would be clearer?

Colonel DINSMORE. That certainly would clarify it; yes, sir.

Mr. BROOKS. What do you think of that?

Mr. HARDY. That would take care of it. But I do not want anybody to be confused in construing selective service inductees to be covered in this last part under any conditions.

Mr. LARKIN. Well, if it is a work of art that we have kept for many years and we do not know that it covers any specific instance, I would be perfectly willing to adopt Admiral Russell's suggestion.

Mr. HARDY. That would simplify the thing, if it can be done without any trouble.

Mr. BROOKS. You heard the suggestion on that. Do you make it as a motion, that we strike out those words——

Mr. HARDY. Yes; I will make that as a motion.

Mr. BROOKS. In article 2, subsection 1, in two instances. All in favor of that will say "Aye." All opposed "No." It is so ordered.

Mr. SMART. Mr. Chairman, in order that the record be perfectly straight on that, I would suggest that on page 4, line 19, the word "drafted" and in line 21 the word "draft" be deleted.

Mr. BROOKS. That is in H. R. 2498 and not in the annotated copy that we are looking at.

Mr. SMART. That is right. All amendments will refer to the bill and not the annotated copy, sir.

Mr. BROOKS. That is right.

Let us proceed, then, with subsection 2, if there are no further comments. Any comments on subsection 2?

Mr. ANDERSON. Oh, on subsection 2, yes, Mr. Chairman. That brings up the question again that I raised in committee the other day.

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Do we refer to ROTC midshipmen there? Are they known as midshipmen when they are taking Navy ROTC training, Admiral Russell?

Admiral RUSSELL. That is covered in definition 8, section 1.

Mr. ANDERSON. I should have raised the question there. It does definitely cover naval and Army ROTC students?

Admiral RUSSELL. Yes, sir.

Mr. ANDERSON. The words "cadets and midshipmen."

Admiral RUSSELL. When they are on active duty.

Mr. ANDERSON. When they are on active duty and not when they are taking a course of training.

Admiral RUSSELL. That is right.

Mr. BROOKS. That would also cover ROTC personnel on active duty.

Mr. ANDERSON. That is what I say.

Mr. BROOKS. Any further comments? If not, we will proceed to subsection 3. Any comments on that?

Mr. ELSTON. That is the section I think that the Reserve officers objected to.

Mr. BROOKS. Colonel Oliver objected and Colonel Wiener said it was not necessary.

Mr. ELSTON. I think they pointed out that you might have a Reserve officer——

Mr. DEGRAFFENRIED. Mr. King objected to it, too, I think.

Mr. HARDY. That covers ROTC in our various military schools that are not directly under the Army or the Navy or the Air Force.

Mr. BROOKS. Mr. Larkin, I believe we ought to hear from you on that.

Mr. LARKIN. Yes. There has been a good deal of discussion of this article, Mr. Chairman. I think the committee will understand its content and intent if I can give you this much background. The Army, in the Articles of War, has not heretofore provided jurisdiction over Reserve personnel when they are in an inactive duty status, nor when they come in for training.

On the other hand, the Navy has had very extensive jurisdiction over their Reserve personnel who are on inactive duty and that jurisdiction is covered in 34 U. S. C. section 855.

Now I think it might be helpful if I just read that section in the record so you can all scrutinize it. It is entitled: "Naval Reserve, Application of Laws Regulations and Orders of the Navy; Disciplinary Actions:"

All members of the Naval Reserve when employed on active duty, authorized training duty with or without pay, drill, or other equivalent instruction or duty, or when employed in authorized travel to or from such duty or appropriate duty, drill or instruction, or during such time as they may by law be required to perform active duty or while wearing a uniform prescribed for the Naval Reserve, shall be subject to the laws, regulations, and orders for the government of the Navy.

Now it goes on with two provisions which are more nearly pertinent to article 3–A, which has also been discussed at great length by some of the witnesses. I think I might hold the provisos until we get to article 3–A.

Coming upon this wide difference in present procedure, the committee of course discussed the problem at great length. For Reserves in general, the Army and Air Force specifically felt they did not need jurisdiction over their Reserve personnel while they were on inactive duty.

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The Navy already had widespread jurisdiction over their personnel. We tried to find out just what the most important point of having jurisdiction over Reserve personnel on inactive duty was, if there was any.

As a result of debates and conferences, it was generally agreed that we should not have for all purposes and all services jurisdiction over Reserve personnel when they are on inactive duty—while they are taking correspondence courses at home or while they are attending meetings or while they are wearing their uniform on parades and the various other provisions by virtue of which the Navy now does have jurisdiction over their people.

The Navy, I think, in the interest of uniformity felt that the most important circumstance under which you should retain some jurisdiction over Reserve personnel was found in this inactive duty training.

You have the situation that occurs on week ends, with Reserves coming in for a short cruise. Usually when naval reservists go on a cruise it is a 2 weeks' cruise and they are on active duty at that time, so there is no problem.

But there is some small amount of activity of that kind. But more important, there is a great deal of activity in the use of aircraft. Now that is common to the Air Force as well as the Navy, where Reserve personnel come in for the whole week end, and form in their units.

The Reserve then trains while on inactive duty, but formally under instruction and uses planes and in general handles expensive heavy equipment. It was felt that it is entirely appropriate when they are acting in that capacity that they be subject to the sactions of the uniform code if they commit offenses while in that status.

The services who are permitting them to use this expensive heavy equipment and this dangerous equipment and should have the right to govern their conduct and their activities under those circumstances.

For that reason, that was the residual amount of jurisdiction that was retained. The rest of the jurisdiction the Navy now has is deleted and goes by the board, but that specific amount does remain.

Mr. BROOKS. What happens——

Mr. LARKIN. The Air Force can use it.

Mr. BROOKS. Excuse me——

Mr. LARKIN. One more second will clear it up, I think.

Mr. BROOKS. All right.

Mr. LARKIN. We specifically did not intend and did not want to impose court-martial jurisdiction over Reserves on inactive duty when they are just taking correspondence courses or coming to meetings or wearing their uniforms or under these various other circumstances.

In order to clarify that, we put in this extra provision: That when they voluntarily come in under written orders they become subject to the code. The written orders we contemplate would spell out the voluntary nature of this type of duty and the fact that they become subject to the military code, and if they are unwilling to do that they do not come on duty.

We have provided this additional provision of notice and written orders so that in the absence of them, when Reserve personnel come to a lecture at night, a meeting, or they take their correspondence course or wear a uniform, they would not be subject to this code.

The intent of the language used is spelled out in the commentary, under the third paragraph.

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The complaint has been made that such jurisdiction over Reserves on inactive duty would cause the Reserve organizations to disintegrate and make them unpopular, that the members would not wish to continue as members if this jurisdiction is provided.

I would submit in that connection that I think the most efficient and effective Reserve service is the Navy's, who have had far more jurisdiction by virtue of their present law.

Mr. BROOKS. Mr. Smart.

Mr. SMART. I am just wondering whether there is any conflict here. If an officer receives those orders and then refuses to obey them, then he is subject to the code, is he not?

Mr. LARKIN. No. He would be subject in peacetime to the code if he were ordered to duty for 15 days. You see, this is voluntarily.

Mr. SMART. Well, what are the mechanics there? Does an officer come in and volunteer to go on week-end training and then get the orders cut? Is that the process through which it goes?

Mr. LARKIN. I do not think it makes any difference which way. Whether he receives orders and he voluntarily accepts them, or whether he voluntarily comes in and gets orders afterward seems to me to be immaterial.

As long as the two elements are present, I do not think it makes much difference which one comes first.

Mr. SMART. Well, the Navy week-end flyers are perfectly used to this provision. But let us take the Air Force Reserves first who are on this week-end type of flying duty. Heretofore they have volunteered for it and have not been subject to the Articles of War.

Mr. LARKIN. That is right.

Mr. SMART. Now they become subject. They still want to take it. Now they come in and volunteer and perhaps after they volunteered and orders have been cut then they find out they are subject to the provisions of this code and do not want to go.

Then would they be subject to court martial under this code for disobeying the order?

Mr. LARKIN. I do not think so.

Mr. SMART. Let us be sure of that.

Admiral RUSSELL. May I make a comment there?

Mr. BROOKS. Admiral Russell.

Admiral RUSSELL. As far as I am aware, no Reserve officer can be ordered to active duty, training, or otherwise, in time of peace without his consent.

Mr. LARKIN. I think the 15-day provision is an Army and Air Force one.

Admiral RUSSELL. No naval officer can be required to come back for a 2 weeks' period if he does not want to come in time of peace.

Mr. BROOKS. Well, ordinarily for this type of training it is a voluntary provision.

Mr. LARKIN. And it so states right here.

Mr. BROOKS. Now, what would you think of this, Mr. Larkin, spelling that out just a little more definitely in reference to written orders?

Mr. LARKIN. Well, in view of the comments about it, the first question I dare say is whether that is a valid type of training to cover. If it is, in view of the inability of most people to understand it from the language—many of them I do not think had the commentary

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and the benefit of what we say we intended to mean—I think perhaps it would be a very good idea to spell it out a little bit more. I have some language which I would just tentatively offer.

Mr. BROOKS. I can conceive of this case, where the Reserves are training in the Air Force on a regular air base and there might be an accident involving the violation of orders with a craft on regular duty.

Now in that instance, what would be the situation in reference to trials, assuming there was any criminal violation? Would it not be a fact in that type of training they would be tried in the local courts, that is the civilian courts, and the men in the Regular Establishment would be tried in a court martial?

Mr. LARKIN. Without this, you mean?

Mr. BROOKS. Without this.

Mr. LARKIN. Yes, sir.

Mr. BROOKS. So you might have on the same plane men in the Regular Establishment, in the same type of incident, being tried in a court martial and the men from the Reserve being tried in the civilian courts.

Mr. LARKIN. That is right.

Mr. SMART. And you will find, Mr. Chairman, I think invariably, that the civilian courts are much more lenient than the court martial for purely military offenses.

Mr. LARKIN. Of course they would have no jurisdiction over purely military offenses.

Mr. SMART. Well, I did not mean to say just that. I have some cases in the office where that very thing happened. One is a larceny case where a GI in the Army got 3 years and a dishonorable discharge and he is now serving his sentence and the codefendant who had been honorably discharged before they found out about it was tried in a civilian court and he got a 2-year suspended sentence. And he was the leader in the commission of the offense.

I offer that as evidence that the civil courts are more lenient, for civil crimes committed in the military, than are courts martial.

Mr. ELSTON. I would like to ask Mr. Larkin what offenses would be included in this subsection that could not be prosecuted in the civil courts?

Mr. LARKIN. All the military offenses outlined in the code—well, some of them are not applicable of course: Misconduct in the face of the enemy and several of those in peacetime.

Mr. ELSTON. Yes; but it does not leave many, does it?

Mr. LARKIN. Not very many. Disobedience of orders and things of that character.

Mr. ELSTON. Well, is it not a little objectionable that you enlarge the number of offenses, or at least you can enlarge the liability of the accused for prosecution by issuing written orders?

Mr. LARKIN. I do not think so, Mr. Elston. He is already a member of the armed services. He happens to be in an inactive duty status. He is voluntarily accepting them, which is the provision that is similar to the acceptance, I think, that is in the enlistment contract. I mean it is analagous to it. It depends on voluntary acceptance.

Mr. ELSTON. I do not think we ought to get in the position where anyone can claim that in the writing of this code we are trying to take in under the provisions of the code people who are not now subject to military or naval law.

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Mr. LARKIN. Well——

Mr. ELSTON. A lot of people claim, you know, that the military is overstepping its bounds and we are becoming a military nation and all that sort of thing, and I do not think we ought to in the enactment of this code begin to include people who have not been heretofore included.

Mr. LARKIN. I agree. I do not think we want to encroach or innovate, if you will, by virtue of the fact that we are dealing with different services. It was one of the problems that we faced.

We faced this problem on innumerable occasions by virtue of our comparison of the two systems which varied both in their origin and as a result of their growth over 150 years here by the different customs under which they have heretofore operated.

So it is perfectly true as far as the Army is concerned this is an extension of jurisdiction. As far as the Navy is concerned it is a dilution of present jurisdiction.

Mr. ANDERSON. Did I understand you to say that you had some additional language?

Mr. LARKIN. Well, this might clarify it. I offer it tentatively. We have just drawn it up. Instead of the language in subdivision 3, this might be a little tighter: "Reserve personnel while they are on inactive duty training authorized by written orders voluntarily accepted by them which specify that they are subject to this code."

I think that would certainly clearly exclude any of these other types of inactive duty training that they may do in the form of correspondence courses.

Mr. ANDERSON. Which indicates that it leaves it strictly up to the individual himself.

Mr. LARKIN. That is right, whether he desires to undergo this type of training and under these conditions.

Mr. BROOKS. Should not your statement go further and say "Who are subject to this code during the limited time of the call"?

Mr. LARKIN. I think that is a good idea, to add that to it.

Mr. BROOKS. So there would be no doubt that it does lapse immediately after the call?

Mr. LARKIN. Oh, yes.

Mr. ANDERSON. Why do we not do that, Mr. Chairman. It would be a lot easier for us horseback lawyers to understand it.

Mr. BROOKS. Suppose we do this. Mr. Larkin, will you prepare that in the form of an amendment. We can take it up this afternoon or later.

Mr. LARKIN. That is right.

Mr. HARDY. Which one will that take the place of?

Mr. SMART. Number three.

Mr. HARDY. What about the ROTC, that would come under two?

Mr. LARKIN. Well, they are either, as I understand it, on an active-duty status, if they ever are, or they are in such an inactive-duty status not covered by written orders which specify that they are subject to the code. It is either one or the other.

They do not find themselves in the circumstances envisioned by number three at any time.

Mr. HARDY. In other words, you think this rewording, would that take care of that situation?

Mr. LARKIN. Yes, sir. I do not think in the first place that a cadet or aviation cadet or midshipman involves ROTC anyhow.

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Mr. HARDY. I did not think it did, either, from the definition we had over here. Seven is cadet and eight is midshipman, here.

Mr. LARKIN. Seven and eight it is.

Mr. BROOKS. Shall we proceed to the next subsection?

Mr. SMART. Four.

Mr. LARKIN. Do you care for me to volunteer quickly on some subdivisions which there has been little or no comment?

Mr. BROOKS. Colonel Maas suggested that subsection four, as I recall, was wrong.

Mr. LARKIN. I recall that, Mr. Chairman. That is a provision that we have not changed by modification, extension, or by diminishing it in any way from the present law that has been on the books for I do not know how many years.

It covers of course the retired personnel of the Regular components, the officers who in a retired state are still considered to be officers of the United States or the armed services. They receive their pay and are carried on the Army and Navy register and I believe are in most cases subject to recall to active duty at any time.

Mr. ELSTON. Well, was there any complaint about that section? I thought the complaint was about subsection 5.

Mr. HARDY. It came on both of them.

Mr. LARKIN. It was also on four, Mr. Elston.

Mr. ELSTON. Four, too.

Mr. HARDY. I thought Colonel Maas' comments about it were particularly pertinent.

Mr. ELSTON. I thought they were, too, on five, because you talk about a person who is receiving hospital benefits from an armed force. He might just go to the hospital once a week and have some slight treatment, as distinguished from a person who is hospitalized and is permanently in a hospital. The subsection does not make any distinction between the two.

Mr. LARKIN. Well, if you care to take them both up at once, we can.

Mr. BROOKS. Let us take them one at a time.

Mr. LARKIN. I think Colonel Maas' objection to four, if I may presume to state it—it is in the record—was that retaining court-martial jurisdiction over retired Regular officers acted as a restriction on their——

Mr. HARDY. Right of free speech.

Mr. LARKIN. Right of free speech or their ability to speak their mind when they are in this statue. He felt great gains, I believe, would be achieved by permitting them to speak their mind. That is a question which I cannot answer.

I would point out it seems to me a considerable number of retired officers have spoken very frankly and at great length recently in the press and in the magazines. I did not notice any undue restriction on them.

There is this about it; I should say: A retired officer after all is an officer of the United States, the same as when he was on regular duty, and he is being paid. It seems to me it is not inconsistent to expect him to comport himself in the way that is a credit to the service and in the same way he was expected to conduct himself when he was a Regular.

He is still officially an officer of the United States and on its retired list and receiving pay. As I say that is the first time I had heard a

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criticism of that article which as far as we are concerned is a pure reincorporation of what has been on the books for many years.

Mr. BROOKS. Mr. Smart, what would you want to say on that?

Mr. SMART. Well, I would merely like to present the converse of that to the committee, not that I am actively opposing this subsection 4. The theory back of the military viewpoint, I think, Mr. Larkin has expressed.

The converse of that is you have a man on the retired list and what is he being paid for? He is being paid because he has completed a statutory period of service within the armed forces or he gets on the retired list by virtue of becoming physically disabled.

In either event he has complied with the law which provides for his retirement.

Mr. HARDY. He has earned his retirement pay already, has he not?

Mr. SMART. Exactly. That is the converse of this argument. He has earned what he is getting.

Mr. ELSTON. And if he is recalled to active service, he will be subject anyhow?

Mr. SMART. That is exactly right. Why should courts-martial jurisdiction prevail over him after he is drawing what he has earned? Why not reserve that jurisdiction until he returns, if ever, to active status. That is the converse of the argument.

Mr. HARDY. That is the way my thinking runs.

Mr. LARKIN. Well, that converse turns, I think, partially on the notion of whether this is a pension earned as a result of the services during active duty or whether it is a partial continuation of pay in a less formally active state by virtue of his continuation in a position as an officer of the United States.

Mr. HARDY. From what little I heard from the Hook Commission, that is certainly the point of view they adopted in trying to work out a pay bill.

Mr. SMART. That is exactly right, Mr. Hardy.

Mr. BROOKS. Admiral Russell, does not the Navy have some sort of retirement like Fleet Reserve or Navy Reserve that might be affected by the deletion of that?

Admiral RUSSELL. The Fleet Reserve is more of a retainer pay proposition, until they have completed a total of 30 years, at which time they go on the retired list. That is for enlisted personnel only.

Mr. LARKIN. That, may I point out, is provided in six. And Admiral Russell can correct me, but I think in six "members of the Reserve Fleet and Fleet Marine Corps Reserve" applies to those who have had 20 years' service and as they complete another 10, then they are transferred to subdivision 4: Formal retirement.

Admiral RUSSELL. That is right. It has gone back and forth between 16 and 20 years.

Mr. BROOKS. And they would be entitled to receive some increased pay after that 30 years?

Admiral RUSSELL. Yes, sir.

Mr. BROOKS. Gentlemen, you have discussed the article there. Any further discussion?

Mr. HARDY. Well, there is just one thing, Mr. Chairman. As far as I can see, when a retired officer goes out on pay that he has earned, at least as I interpret it, by his service, I do not see why he should be subjected to military courts.

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I do not see why he should be treated any different from any other civilian.

Mr. BROOKS. Do not retired officers have some right to the use of military equipment—a special right?

Mr. ELSTON. He has some privileges.

Mr. SMART. So far as the privileges are concerned, Mr. Brooks, the retired officer of the Navy, be he a Regular or Reserve, gets exactly the same benefits. That is, he is entitled to hospitalization.

He is entitled to shop at a ship's store. He is entitled to go to the commissary. I do not know whether or not there are additional benefits. But those three are specifically rights of retired personnel. And in the event of the physical retirement of a Reserve officer of the Navy, he goes on the same retired list of the Navy as the Regular officer who has served out his 30 years and is paid from the same naval appropriations. There is that much difference between the Army and the Navy.

Mr. ELSTON. May I ask Mr. Larkin if he knows of any offense that retired personnel might commit that civil courts could not prosecute them for?

Mr. LARKIN. Oh, yes. Any military offense, I should say.

Mr. ELSTON. Well, if they are retired what military offense would they commit that would not be punishable in the civil courts?

Colonel CURRY. I can tell you some.

Mr. BROOKS. All right, Colonel.

Colonel Curry. It is not often done, but it has been used to persuade them to pay their debts and answer correspondence about it. They could not be tried in a civil court for not paying a debt, a dishonorable indifference toward a just debt or for failing to answer correspondence about it. That is most likely.

Usually it does not result in a trial because they pay the debt and that ends it.

Mr. LARKIN. They are regarded in a certain classification by other provisions of law. I believe the dual compensation of Federal Government employment applies to retired officers who are receiving this pay.

You also have this situation: Suppose some of them are convicted in the civil courts. Would you continue to keep them on the Army register as an official officer of the United States and pay them while serving penitentiary terms and so forth and so on?

In the last analysis it comes to a question of not having jurisdiction over them and just retiring them completely and making them no longer an official part of the military forces in any way or keeping them on with those prerogatives and expecting them to comport themselves in the fashion they did when they were Regular officers.

Mr. BROOKS. I think the question is whether there would be done any harm by leaving them out. If there is no real need for keeping them under this jurisdiction, why it would seem to me they would be out of place in the code.

Mr. ELSTON. It would seem to me that the mere fact of making somebody pay their debts is not important. A civilian can be sued and a retired officer can be sued. If he is getting compensation from the Government and they get a judgment in the civil court they can levy on his compensation, can they not?

Admiral RUSSELL. No, sir.

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Mr. HARDY. They cannot do that.

Mr. ELSTON. If he owns any property, they certainly can levy on it.

Mr. DEGRAFFENRIED. Yes.

Mr. ELSTON. Of course there is certain civil pay that cannot be levied upon, unless it is over a certain amount.

Colonel CURRY. Congressman, I was not arguing that you should retain that so you can do that. I was merely specifying that that is one thing they can do. It certainly would be a relief to the services if they did not have to bother with it.

Admiral RUSSELL. I do not think we have had so much of that, sir. We had a couple of cases that I remember of wives who yelled non-support. I know of at least one case where a retired officer was court-martialed—that has been a good many years ago—for that offense.

Mr. BROOKS. Admiral, would the Navy have any particular objection to striking that out?

Admiral RUSSELL. I believe we would; yes, sir.

Mr. BROOKS. You would.

Mr. LARKIN. If I may so so, I think the three services would desire to offer a formal objection to striking out this provision.

Mr. BROOKS. A formal objection.

Mr. HARDY. Well, I would be interested in knowing what real good purpose it serves. If it serves some good purpose, why it is all right with me, but I declare I cannot see the justification of it on the basis of what little I know about it.

And as far as what the Colonel said back here, about helping to collect it, I have not seen that work out in the observations I made.

Mr. BROOKS. I would suggest this, gentlemen. We are going to take up later on subsection 3. Let us take three and four together. If there is no objection we can do that and think about it. And we can go ahead to five now.

Mr. LARKIN. All right, sir.

Mr. BROOKS. Do you care to make a comment in reference to the suggestion that the term "hospital benefits" should be changed?

Mr. LARKIN. Well, it may be that that is too obscure to reflect what we intended to reflect, which was specifically to cover a man in more or less a permanent status is in a hospital being treated. It is a question of degree, I suppose, of whether a 2-day stay as against a month is contemplated here. It was not contemplated specifically that out-patients who come in for a prescription or for an examination would be covered.

Now the problem, here, I think, is more of a Navy one. You see, most retired personnel of Reserve components receive their hospital benefits, if they are Army or Air Force personnel, in the veterans' hospitals which this of course does not cover.

As far as Navy personnel are concerned, however, they almost always receive those benefits in the naval hospitals. So you have a difference there.

Mr. ELSTON. Do they not have the power to punish them if they violate any of the regulations by simply denying them the hospital benefits? Suppose you got a man in the hospital and he refused to obey orders and was insulting to the nurse and a lot of other things, do they not have the authority to deny him further hospitalization?

Mr. LARKIN. I cannot answer that. Do you know, Captain Woods?

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Captain Woods. They are clearly entitled to hospital benefits as a matter of law. It would be very hard to say that as a matter of regulation you could defeat those rights because they fail to conform with those regulations.

Mr. Brooks. What would you think of this, Captain, of changing that to read "receiving hospitalization"?

Captain Woods. I think that might make it a bit clearer than it now is.

Mr. Smart. This might very well refer to in-patient treatment as well as out-patient treatment, such as a fellow going to a dispensary. I think if it is anticipated that a man is actually being hospitalized so you can maintain some control over his decorum while he is a patient in a hospital——

Captain Woods. I think that would make it clearer. Hospitalization with us is a word of art and it means receiving treatment in a hospital.

Mr. Brooks. Is there any objection to changing that to "hospitalization while actually hospitalized"?

Mr. Larkin. No.

Mr. Brooks. Now, is there any objection to that subsection 5 as changed?

Mr. Smart. Let me ask one question, after the committee, sir.

Mr. Elston. Well, "hospitalization" still might be indefinite.

Mr. Hardy. He is treated in a hospital.

Mr. Larkin. That is still indefinite.

Mr. Smart. I think this, that the service people who are going to administer this law are definitely going to know what the intent of Congress was by exactly what you are saying here. If you say that this applies in a hospital while a person is actually being hospitalized, I would certainly hate to try to be the prosecutor of a case involving a fellow who has misbehaved at a dispensary. He would not get any place with that.

I would like to ask one question before you leave these two.

Mr. Brooks. All right, Mr. Smart.

Mr. Smart. It appears to me—I just cannot tell for certain—that this is a relaxation of jurisdiction over Navy retired officers on the retired list. Is that correct?

Admiral Russell. That is correct.

Mr. Larkin. That is correct.

Mr. Smart. You see the point there, Mr. Chairman, is that the physically retired Navy Reserve officer is on the same retired list as the Regular officer of the Navy. The physically retired Army officer is certified to VA as being authorized to draw retirement pay—not retired pay but retirement pay.

So there has been a great difference in the past as between physically retired Navy Reserves and Army retired Reserve officers. I just wanted to make certain here that the Navy was relinquishing courts-martial jurisdiction over retired Reserve officers. And they say that that is correct.

Mr. Brooks. Furthermore, in reference to the suggestion regarding changing that to read "while actually being hospitalized," a retired officer in the hospital, even temporarily, might violate some provision of the regulations which would justify some sort of punishment.

Mr. Smart. Captain Woods states that the word "hospitalization" is a word of art with the Navy and actually means I presume——

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Captain Woods. Undergoing treatment in a hospital as a hospital patient.

Mr. Elston. Could not that be written in the commentary, here, so it will be understood what is meant by the term "hospitalized"?

Mr. Smart. It is in there now. It is in the record.

Mr. Elston. Then I think the language suggested by the Chairman would probably take care of it.

Mr. Brooks. Is there any objection to that language?

Mr. deGraffenried. No.

Mr. Brooks. If not, we will adopt that language.

Now is there any objection to subsection 5 with the changed language? If not, then it is adopted——

Mr. Smart. One question. You say "that language." I do not know what that exact language is, sir.

Mr. Larkin. The reporter has it.

Mr. Elston. Was it not something like: "retired personnel of a Reserve component who are receiving hospital benefits from an armed force while actually being hospitalized" or something like that?

Mr. Hardy. "While receiving hospitalization from an armed force."

Mr. Elston. "While receiving hospitalization"—well, that is a little mixed up. Why not leave the amendment——

Mr. Brooks. Change the two words "hospital benefits" so it will read "who are receiving hospitalization from armed forces."

Mr. Smart. That is good.

Mr. Elston. All right.

Mr. deGraffenried. That has it.

Mr. Brooks. All right, if there is no objection to it, then we will pass on.

Now, gentlemen, it is 12 o'clock. What is the will of the committee: meet at 2 o'clock?

Mr. deGraffenried. It is agreeable to me.

Mr. Brooks. If there is no objection, then, we stand adjourned until 2 o'clock.

(Whereupon at 12 o'clock, the subcommittee adjourned until 2 o'clock.)

AFTERNOON SESSION

Mr. Brooks. The committee will please come to order.

When we recessed for lunch, gentlemen, we were discussing article 2, subsection 5. As a matter of fact, we had just completed that. And if there is no objection, we will proceed with subsection 6 of article 2.

My recollection is that Colonel Maas and perhaps someone else had some objection to section 2.

Mr. Larkin, do you want to comment on that?

Mr. Larkin. We spoke of it very briefly this morning, Mr. Chairman, in connection with the consideration of subdivision 4. And as Admiral Russell pointed out, that is a provision which is very similar to 4 in that it covers the Regular components, but is a type of Reserve that is found in the Navy only and is the type of Reserve that comes into being or to which a man comes into after 20 years of service as distinguished from the 30 years required in 4.

I should say that the same considerations apply to it as to 4.

Mr. Brooks. Well, is there not an additional reason? In reference to 6, the Fleet Reserve and the Fleet Marine Corps already come within the provisions of the military justice laws. And if you knock

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that out you will actually be circumscribing the law as we have it at the present time.

Mr. LARKIN. Oh, that is right.

Mr. BROOKS. Is that not true?

Mr. LARKIN. That is a present provision.

Mr. ELSTON. How long has that been the law? Quite a while, I believe.

Mr. LARKIN. Oh, yes, sir. Specifically I see a statute that covers it now that was passed in 1938. I do not know if that is a continuation of a previous statute or not. I think so.

Incidentally, I think you would be interested in a case which has construed this specific section as it appears for the Navy. The case is *Pasela* v. *Fenno* (76 Fed. Supp. 230), in which the constitutionality of this provision was challenged on the ground that the Fleet Reserve was not on active duty at the time when he was court-martialed and the Supreme Court of the United States denied certiorari after it went through the other courts.

But it is not an innovation with us at any rate. It is the same reincorporation again of what has been on the books.

Mr. BROOKS. Mr. Smart.

Mr. SMART. There is one more consideration in regard to that subsection, Mr. Chairman. Those in the Fleet Reserve and Fleet Marine Corps Reserve after 20 years of service draw retainer pay, not retired pay.

Now the important point there is that for the next 10 years, even though they are not on active duty, they continue to accumulate longevity and after 10 years on the Fleet Reserve list they can then draw retirement pay. They go to the retired list.

But, you see, they are in a pay status and continue to enhance their position for 10 years after they are in the Fleet Reserve. So it is considerably different than a person who has been retired and can never enhance the amount of money he will draw.

Mr. BROOKS. As I remember that, it places these people on a semi-inactive status. They are active for some purposes and inactive for others. There is nothing like that in the Army or the Air Reserve.

Mr. SMART. No.

Mr. BROOKS. Do you have any comments, Mr. deGraffenried, or any questions?

Mr. DEGRAFFENRIED. I do not believe so, Mr. Brooks.

Mr. BROOKS. Mr. Elston?

Mr. ELSTON. No.

Mr. BROOKS. Is there any objection to leaving that subsection in the bill? If there is no objection, we will leave it in and go ahead with subsection 7.

Subsection 7 covers all persons in custody of the Armed Forces serving a sentence imposed by a court martial. I assume there is no objection to that.

How about subsection 8?

Mr. ELSTON. I would like to be enlightened a little bit on what is meant by the expression "and other organizations."

Mr. LARKIN. Well, that was put in, I believe, Mr. Elston, more as a caution than for any other reason. The situation has been heretofore that the Coast and Geodetic Survey, the Public Health Service, and the Lighthouse Service, for instance, do come under the Articles of War

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or the Articles for the Government of the Navy, with their personnel, when those organizations are transferred to or are serving with the armed services generally in time of war.

Those organizations went to either the Navy or the Army. By a recent statute the Lighthouse Service has become a permanent part of the Coast Guard, I believe. Is that not right, Commander?

Commander WEBB. Yes.

Mr. LARKIN. So they are provided for. But just what other Government agencies or services in the future might be transferred either temporarily for war purposes or permanently we were unable to guess, and it was for that reason that it was worded that way.

Heretofore the jurisdiction given over Coast and Geodetic Survey, Public Health Service and Lighthouse Service, was scattered throughout the United States Code. The provisions were not a part of any Article of War or Articles for the Government of the Navy.

This subdivision, I recall from some of the witnesses, has been construed to mean that the Boy Scouts or the American Red Cross or other organizations might come under the jurisdiction of the Code. I can say we had no such intention. There is a Judge Advocate General's decision, as a matter of fact, which points out that the Red Cross is not under the Articles of War. I will see if I can find it. And of course it is not a Government organization in the sense that we intended to cover at all.

Now perhaps it would be clearer if we said, instead of "serving with": "when transferred to." It would mean the whole organization.

Mr. BROOKS. I think that would be much better.

Mr. SMART. "Transferred to and serving with."

Mr. LARKIN. I think "when transferred to." Actually I notice the language of the present statute in several cases says, as to the Coast and Geodetic Survey, "when transferred to," and since there is a special meaning to "serving with" in subdivision 1 (l), perhaps it would be clearer if we revert back to "transfer to." I would have no objection if you think it clears it up.

Mr. BROOKS. How would you get the Lighthouse people in there if you did not use that term: "transferred to," because they could not be construed as serving with the Coast Guard, could they?

Mr. LARKIN. Well, they are transferred to them now, and I believe, are serving with them. Could you enlighten us on that, Commander?

Commander WEBB. Yes, sir. The situation is that those who were able to accept military status as commissioned officers, warrant officers or enlisted, have been integrated with the military personnel.

Those who did not accept such status or could not qualify remain as civilian employees and of course would not come under the Code in any case. Those who would or could be affected are now part of the Military Coast Guard and automatically would come under this Code.

Mr. BROOKS. Well, are they serving with, or, are they transferred to the Coast Guard?

Commander WEBB. They have been transferred to and are now integrated right in with all the other military personnel of the Coast Guard, Mr. Chairman.

Mr. BROOKS. What is the pleasure of the committee in reference to that?

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Mr. ELSTON. I think, Mr. Chairman, it ought to be amended by adding the words that were suggested: "when transferred to and when serving with the armed forces of the United States."

Mr. SMART. Colonel Maxey of the Air Force has a point there on that. What is it, Colonel?

Colonel MAXEY. "Transfer" is a word of art to some extent in the services. It means in the nature of a permanent assignment. I think that is not what is intended here. These organizations would not be permanently transferred to. If they were they would become part of it. It seems to be a separate organization.

Mr. BROOKS. What would you say of "assigned to?"

Colonel MAXEY. I was going to suggest "assigned to," Mr. Brooks, if you think "serving with" is not clear enough. "Assigned" is not as strong a word as "transfer" within our use of those terms.

Mr. ELSTON. I think perhaps that is a better change.

Mr. DEGRAFFENRIED. "Assigned to and serving with."

Mr. BROOKS. "Assigned to and serving with." You have heard the motion. Is there any objection to it? If not, the change will be made.

Now, if there is no other discussion on subsection 8, what about 9? I assume there is no objection to 9.

Mr. ELSTON. Well, there was some objection raised by one of the witnesses who testified before us——

Mr. BROOKS. You mean to 9?

Mr. ELSTON. Yes. There was some objection raised to 9 by, I believe it was the Reserve officers group.

Mr. SMART. I do not remember any objection to No. 9, Mr. Elston, except under the general premise that people should not be subject to the code unless they are on active duty.

Colonel DINSMORE. May I say something there, Mr. Chairman.

Mr. BROOKS. All right, Colonel.

Colonel DINSMORE. That is in the Articles of War now, and it is in accord with the laws of war as set forth in the Geneva convention.

Mr. ELSTON. I see no objection to it.

Mr. LARKIN. We have a note to that effect in the commentary, Mr. Chairman.

Mr. BROOKS. Is that all right with you, Mr. deGraffenried?

Mr. DEGRAFFENRIED. Yes.

Mr. BROOKS. If there is no objection, then, let us pass on to the next one.

That is No. 10. I would like to ask this question about No. 10. Would that cover the Red Cross, the Salvation Army, or the church organizations that very often accompany and serve with the armed forces?

Mr. LARKIN. It would in time of war only cover individuals who are accompanying the armed forces in the field, whether the field happens to be in this country or out of this country and whether or not they are Red Cross, Salvation Army, civilian employees, or anybody else.

Mr. DEGRAFFENRIED. Newspapermen.

Mr. LARKIN. War correspondents, and so forth. This, by the way, is an exact incorporation of the present provision in the Articles of War.

Mr. BROOKS. It would cover land and water.

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Mr. LARKIN. Yes, I should say so.

Mr. BROOKS. That is what the annotation says.

Mr. LARKIN. Yes, that is right.

Mr. BROOKS. Any discussion? Any objection? If there is no objection, all right.

What about subsection 11? I would like to have the record refer to the reason for these parallels in reference to Alaska, the Virgin Islands, and these other places.

Mr. LARKIN. The purpose of that, Mr. Chairman, is to give jurisdiction outside the continental limits of the United States to the services over all persons who are serving with, employed by or accompanying the armed services and outside of those areas of Alaska, the Canal Zone, Hawaiian Islands, Puerto Rico, and so forth, for the reason that we have some kind of United States courts in those areas of the Hawaiian Islands, Canal Zone, Puerto Rico, and the Virgin Islands, and even though they are outside the continental limits of the United States we do not desire or intend to take jurisdiction over civilians who are accompanying or serving with the Army in those places.

But beyond that point of longitude in Alaska, where there are no United States courts of any kind, it is believed necessary to have some jurisdiction over civilians. Now that is the line of demarcation.

This, incidentally, is a reincorporation or a combining of the present Articles of War and Articles for the Government of the Navy, with the exception of the words in the second line which were added and which have been criticized, specifically: "or under the supervision of."

Now I am trying to reconstruct the reason we used these words, and I think that it had to do with the situation outside of the continental United States and outside of the longitude mentioned where it is necessary frequently to have jurisdiction over employees of contractors in overseas installations who are working for the military.

I think the criticism, however, that those words go further than that and conceivably could be construed to mean that we get supervision then over, for instance, the Navy of Guam is meritorious.

We did not think of it at all at the time. We had no intention of trying to provide such jurisdiction.

Mr. BROOKS. How is Guam governed now?

Mr. LARKIN. Well, Guam happens to be under the Navy, and it is a place outside of this longitude where the jurisdiction applies to the civilians. But it would cover the natives of Guam, apparently, which we have no intention of covering.

Mr. SMART. And American Samoa also.

Mr. LARKIN. And American Samoa and the trust territory of the Pacific. So far that reason I would move the committee to strike out that language. It is in addition to what is in the present language. It was put in as I say in an effort to——

Mr. BROOKS. What language is that?

Mr. LARKIN. In the second line of 11, the words "or under the supervision of".

Mr. DEGRAFFENRIED. That is mighty broad.

Mr. LARKIN. If you leave those words in there, why the natives of Guam and Samoa are under the supervision of the Navy specifically and they would be covered where we did not intend to.

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Mr. BROOKS. What about this, Mr. Larkin: Suppose an island out there is captured as it was in the last war and retained as some of those islands have been retained, what government do you have in the islands?

Mr. LARKIN. Well, at Guam——

Mr. BROOKS. Well, take Kwajalein, for instance?

Mr. LARKIN. Well, you would presumably be either serving with or accompanying the armed service. We would have jurisdiction.

Mr. BROOKS. Well, were there not natives there?

Mr. SMART. Mr. Chairman, I think the thing that happened in those cases is that you had a military government set up and before your invasion ever took place your commanding officer was authorized to appoint provost courts to handle all civilian cases.

You never had them in courts martial. That is the same situation not only on Kwajalein and Okinawa but all of the places where we took large numbers of civilians. They were not subject to courts martial, but to provost courts and other types of military courts which the commanding officer was empowered to convene.

Mr. LARKIN. That was during wartime, you see; 11 applies to war and peace.

Mr. BROOKS. Yes.

Mr. LARKIN. That is the distinction. And also 10.

Mr. BROOKS. Yes.

Mr. SMART. Mr. Chairman, may I suggest the proper technical amendment here for the record?

Mr. BROOKS. You have it written out there, Mr. Smart?

Mr. SMART. Yes; I can give it to you.

Mr. BROOKS. All right.

Mr. SMART. On page 5, line 15, after the word "by" insert the word "or" and in line 16 delete the words "or under the supervision of".

Mr. BROOKS. Now you heard that suggested amendment. Is there any objection to it?

Mr. ELSTON. Mr. Chairman, I would like to ask about the language used in line 17 and also line 18. You say "all persons serving with" and so forth "the armed forces without the continental limits of the United States and the following Territories."

It sounds like you mean outside of those Territories. Why should you not say "without the continental limits of the United States, including that part of Alaska" and so forth. Is that not what is intended?

Mr. LARKIN. I think that is what is intended; yes, sir. I think if we change that we might well change the word "continental." There is the point of connection.

Mr. BROOKS. Without the "limits."

Mr. LARKIN. Territorial limits, including that part of.

Mr. ELSTON. Then it would read "without the limits of the United States, including that part of Alaska," and so forth?

Mr. LARKIN. I just cannot think it through to determine whether it changes the sense of it or not.

Mr. SMART. It is safe the way it is, Mr. Elston.

Mr. ELSTON. It sounds like it might mean outside the following.

Mr. SMART. Well the point is, of course, the continental limits of the United States do not include any part of Alaska, the Canal Zone.

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the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands.

They are not within the continental limits. But they do have types of courts there which are recognized by our Government that do not exist in territories beyond that area.

Mr. BROOKS. What would you think of striking out the word "Territories"? The thing I have in mind is this: The proposition now is before Congress to make of Alaska a State, for instance. Now if you leave that word "Territories" in there it certainly gives the impression that Alaska will remain a Territory and not a State.

Mr. LARKIN. I do not see any objection to that, Mr. Chairman. I do not consider that it would create any great difficulty in going forward with making Alaska a State. It certainly would not preclude it by any means.

Mr. BROOKS. Well, unless there is some advantage in striking it out, why I would want to see it left in.

Are there any more suggestions?

Mr. ELSTON. This would not be considered to include any divilians over in Germany who are now under the jurisdiction of the civil courts that we have set up over there to try them, would it?

Mr. LARKIN. Yes, sir, if they are serving with or accompanying the armed services.

Mr. ELSTON. Of course a great many of those people are now tried by the civil courts over there. At least they are not tried by courts martial.

Mr. LARKIN. That is right. They are tried by occupation courts or other types, as Mr. Smart indicated—principally these occupation courts which are a combination of German law and court-martial law.

Mr. DEGRAFFENRIED. Merely because they are living there, Mr. Larkin, that would not be construed as meaning "serving with" or "accompanying", would it?

Mr. LARKIN. No.

Mr. DEGRAFFENRIED. If they just lived there.

Mr. LARKIN. That is right.

I can for the record give you a definition and construction of the word "accompanying" and "serving with" as construed by the courts. I have it right here. It is quite lengthy. It is considerable discussion.

Mr. ELSTON. That might be helpful.

Mr. LARKIN. We can put it in the record and I can supply you with a copy of it.

Mr. BROOKS. Do you have it there?

Mr. LARKIN. Yes, sir, I do.

Mr. BROOKS. Suppose you read it in the record right now?

Mr. LARKIN. All right.

Mr. BROOKS. It is short, it is not?

Mr. LARKIN. Well, a page and a half.

Mr. BROOKS. Then why not just put it in the Record.

Mr. LARKIN. All right, I will offer it for the record, if I may.

Perhaps I can extract a little bit for the information of the members:

> One may be considered to be accompanying the Army of the United States, although he is not directly employed by the Army or the Government but works for a contractor engaged on a military project or serving on a merchant ship carrying war supplies or troops.

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That is the principal enunciated in a number of cases.

In those cases, however, where a civilian has been held to have been accompanying the Armies it appeared that he has either moved with the military operation or that his presence within a military installation or theater was not merely incidental but was connected with or dependent upon the activities of the Armies or their personnel. He must in order to come within this class of persons subject to military law accompany the military service in fact.

And it goes on in the same fashion as to "serving with." It would cover the type of person who is accompanying. But the incidental citizen who is in the area would not be covered.

Mr. ELSTON. It would not cover the families of soldiers, would it?

Mr. LARKIN. I think it would, if they were dependents.

Mr. ELSTON. Well——

Mr. LARKIN. If they were living with him in some quarters furnished and moved from place to place with him, based on the service——

Mr. ELSTON. That this wife of the soldier who recently was tried. I forget the name.

Mr. LARKIN. Mrs. Ybarbo.

Mr. ELSTON. Yes. She was tried for murder and was given a life sentence and it was reduced to 5 years because the law of Germany required 5 years as maximum punishment.

Mr. LARKIN. Yes.

Mr. ELSTON. She was not tried by court martial.

Mr. LARKIN. No.

Mr. ELSTON. By a military court. She was tried by one of those special courts that had been set up in Germany.

Mr. LARKIN. Yes, sir.

Mr. ELSTON. Now do you think there is any possibility of this section being construed as divesting those courts of jurisdiction over families of soldiers?

Mr. LARKIN. No. It could not specifically because we have in another part of the code an article which specifically guards their jurisdiction.

Mr. SMART. They have concurrent jurisdiction, Mr. Elston.

Mr. LARKIN. Yes, sir.

Mr. ELSTON. If you say it is mentioned later on, we do not need to bother with it now.

Mr. LARKIN. Yes.

So this could not be construed as divesting any occupation court, military tribunal, or provost court of any jurisdiction that it currently has today.

Mr. BROOKS. I just received today a letter from a mother saying she was going over to visit her daughter who is the wife of an officer in Germany. When she arrives over there the court, that is the military court, would have concurrent jurisdiction under this code with the court martial in the trial of the case if one should arise, would they not?

Mr. LARKIN. The occupation court would have jurisdiction over her if she committed any crimes.

Mr. SMART. I do not see where that particular person would come under the code. She is not serving with, employed by, or accompanying the forces.

Mr. LARKIN. That is right.

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Mr. SMART. She would not, in any case, in my opinion, be subject to this code. Whereas the family of the soldier, be it officer or private, does accompany him and he certainly is a part of the forces.

I do not think it could be construed that this provision would be broad enough to cover the relative who goes for a mere visit.

What is your view, Colonel Dinsmore?

Colonel DINSMORE. I agree with Mr. Smart.

Mr. SMART. How about you, Captain Woods?

Captain WOODS. I agree with you.

Mr. BROOKS. Any further comments? Any further objection to article 2, subject to the reservation covering subsections 3 and 4 which have already been made? If not, we will approve it and move to article 3.

Mr. Smart, would you read article 3.

Mr. SMART. Mr. Chairman, before article 3, I just want to know if subsection 12 has been considered?

Mr. BROOKS. Oh, we missed 12. We better go back to subsection 12.

Mr. SMART. Yes, sir.

Mr. LARKIN. Subsection 12 is adopted from 34 United States Code, section 1201. The only difference between it as it appears here and as it appears in section 1201 is that it now is made to apply in times of peace as well as war, just as subsection 11 is. It covers the areas, that is these bases which the United States has and during the early part of the war acquired in addition to Philippine bases and would, I believe, be subject to restrictive agreements that have been entered into between the United States and the Philippine Government on the one hand in connection with that base and any agreements between the United States Government and Great Britain on the other in connection with the bases we have leased from them.

Other than that, I do not think there is anything——

Mr. DEGRAFFENRIED. Has the constitutionality of that particular subsection there been passed on, Mr. Larkin? In your judgment, do we have that right?

Mr. LARKIN. Not that I know of.

Mr. DEGRAFFENRIED. Do we have that right?

Mr. LARKIN. Well, as it is written now it provides for all persons other than military within a leased area. This country already had agreements with Great Britain, for instance, of the concurrent type of jurisdiction, that is, the British and this country, within and without the leased area.

For instance, I believe there is a leased area in Bermuda. Is that not a fact?

Captain WOODS. That is right.

Mr. LARKIN. Most of those leased areas actually are under the jurisdiction or operated by the Navy. There is an agreement between Great Britain and United States as to nationals on the spot. Now we are governed administratively by those agreements with the British and this subdivision provides permissive jurisdiction which is subject to those agreements and their operation.

Mr. ELSTON. What do you mean by the "secretary of a department"?

Mr. LARKIN. Well, it depends on which department is given the responsibility of operating the area.

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Mr. ELSTON. You mean the service department?

Mr. LARKIN. That is right; yes, sir. The Secretary of the Department I think we defined as Army, Navy, and Air Force, in our department definitions, under subdivision 11 of article I.

Mr. ELSTON. Some leases might be under the jurisdiction of the Secretary of the Interior or Commerce or some other department—the State Department.

Mr. LARKIN. That is right, and on that basis it would not be covered here. "Department" has been defined to refer to Army, Navy, Air, and Coast Guard. Interior would be excluded by the definition.

Mr. ELSTON. That includes the Secretary of Defense?

Mr. LARKIN. No.

Mr. ELSTON. Well, might it not be possible for the Secretary of Defense to make agreements or leases with respect to the use of foreign territory?

Mr. LARKIN. This is a tentative answer. I think not. The Department of State always makes the arrangement and then the President I think designates the military department that is to operate it.

Captain WOODS. I think that is correct.

Mr. LARKIN. Is that correct, Captain?

Captain WOODS. Yes, sir.

Mr. LARKIN. I know the Department of State is the proper authority to enter into the leases and is the Department which does negotiate with the foreign countries. Then I believe, as I say, the President designates in most all of these cases the Navy.

Mr. WOODS. Mr. Larkin, do you not have some duplication in subsections 12 and 11? You refer to the same description there, as to Alaska. Why is that included in both subsections?

Mr. LARKIN. Well, I do not know that we can——

Mr. ELSTON. In the one case they are serving with troops and in the other they are not.

Mr. LARKIN. That is right. But the distinction is all persons on the one hand and the other is when they are accompanying the armed forces.

Mr. BROOKS. Well——

Mr. LARKIN. But in Alaska, the same reason obtains. There we do have United States courts, where in some of these leased areas there are probably no courts at all or if there are, there is a concurrent jurisdiction with Great Britain or the Philippines or whoever it happens to be.

I do not think that you could cut out in 12 that latter part without doing violence to it because of the difference. But I would prefer to ask the Navy if they have an opinion on it.

Captain WOODS. Well, I think this is addressed to areas leased from foreign governments and unless you leave this in it would be areas leased within the United States. We certainly do not want that.

Mr. LARKIN. Areas leased by the United States Government from a State, for instance.

Captain WOODS. Yes.

Mr. LARKIN. Do you think a reservation would come under that?

Captain WOODS. Yes.

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Mr. BROOKS. Well, do you need a special power to cover a reservation in Alaska?

Captain WOODS. No, sir. That is just to make sure that this would not touch areas leased in Alaska.

Mr. BROOKS. It seems to me subsection 11 covers all persons serving with, employed by or accompanying the armed forces in that part of Alaska east of longitude 100 degrees and 72 degrees west.

Subsection 12 says "All persons within an area leased by the United States which is under the control of a secretary of a department and which is without the continental limits of the United States and the following territories." Then you describe Alaska again.

Mr. LARKIN. Of course you see you have a much broader jurisdiction in 12, in that you have jurisdiction over persons within the area without them serving or accompanying. Local bandits, for instance, or other people within the area who have no connection whatever with the military——

Captain WOODS. That is right.

Mr. LARKIN. In event there were no local courts or in the event the foreign nation that leased it to us had no courts there, why somebody would have to have jurisdiction to try them.

Mr. ELSTON. It might be completely unoccupied territory.

Mr. LARKIN. That is right.

Mr. BROOKS. Well, if you think there is no harm from the standpoint of duplication, because you do cover the same group there twice, why it is all right.

Mr. LARKIN. I think it is for the purposes of guaranteeing that we do not have jurisdiction in Alaska, Puerto Rico, and so on and so forth.

Mr. HARDY. It seems to me like 12 covers the whole field. I do not believe 11 would.

Mr. BROOKS. Twelve covers everything. You could certainly leave out that part in 11 there referring to Alaska.

Mr. HARDY. Except that it says "leased" and the other does not.

Mr. ELSTON. It would be just a little clearer if it was in both of them, would it not?

Mr. LARKIN. I think so.

Mr. BROOKS. Well, is there any objection to 12?

Mr. HARDY. No.

Mr. BROOKS. If there is no objection, then it will stand approved. We move on, then, to article 3, Mr. Smart.

Mr. SMART (reading):

ARTICLE 3. Jurisdiction to try certain personnel.

(a) Reserve personnel of the armed forces who are charged with having committed, while in a status in which they are subject to this Code, any offense against this Code may be retained in such status or, whether or not such status has terminated, placed in an active duty status for disciplinary action, without their consent, but not for a longer period of time than may be required for such action.

(b) All persons discharged from the armed forces subsequently charged with having fraudulently obtained said discharge shall be subject to trial by court martial on said charge and shall be subject to this Code while in the custody of the armed forces for such trial. Upon conviction of said charge they shall be subject to trial by court martial for all offenses under this Code committed prior to the fraudulent discharge.

(c) Any person who has deserted from the armed forces shall not be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any subsequent period of service.

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References: Proposed A. G. N., article 5 (a); 52 Stat. 1180 (1938), 34 U. S. C., section 855 (1946) M. C. M., paragraph 10; N. C. and B., section 334;

Commentary: Subdivision (a) is substantially a reenactment of the present Navy law as set forth in 34 U. S. C., section 855. A similar provision is found in article 5 (a) of the proposed A. G. N.

Subdivision (b) is the statutory expression of the law as set out in M. C. M., paragraph 10 and N. C. and B., sec. 334. It differs from a similar provision in article 5 (a) of the proposed A. G. N. in that it provides that a person who obtains a fraudulent discharge is not subject to this code during the period between the discharge and later apprehension for trial of the issue.

Subdivision (c) is prompted by ex parte Drainer, 65 F. Supp. 410 (N. D. Cal. 1946), which held that a discharge from the naval service barred prosecution of a person for desertion from the Marine Corps at a period prior to his enlistment in the Navy. See article 5 (a) of the proposed A. G. N.

Mr. BROOKS. Now there was some criticism leveled at this article.

Mr. ELSTON. Subsection (a) particularly.

Mr. LARKIN. Yes. The thinking that went into 3 (a) is similar to that which was used in article 2, subdivision 3 and 5, or at least we started off with the same set of circumstances.

The Department of the Army and the Air Force did not have jurisdiction of this character and do not have it at the present time. The Navy did have and at this time does have such jurisdiction. It is found in 34 U. S. C. section 855, the first part of which I read in connection with article 2, subdivision 3.

That section has two provisos which I would like to read at this time.

Provided, That disciplinary action for an offense committed while subject to the laws, regulations, and orders for the Government of the Navy shall not be barred by reason of release from duty status of any person charged with the commission thereof.

All this, of course, is Naval Reserve personnel.

And provided further, That for the purpose of carrying out the provisions of this section to affect members of the Naval Reserve be retained on or returned to a duty status without their consent but not for a longer period of time than may be required for disciplinary action.

Now, this gives in other words a continuing jurisdiction over Reserve personnel on inactive duty if it is discovered while they are on inactive duty that they committed an offense while they were on active duty or in a status under the code. Article 2 subdivision 3 would be such a status.

It is a problem that is very much akin to the problem that was faced in the Hirshberg case, except this of course covers Reserve personnel who have not been discharged whereas in the Hirshberg case as you know you had a situation where a Navy petty officer during the term of his enlistment became a prisoner of war, was returned to this country and hospitalized, and then received a discharge and immediately reenlisted, and it was not until his service during his reenlistment that it was discovered or it was alleged that he had committed the crime of maltreating fellow prisoners while in his first enlistment.

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This brought up the question of whether or not you still had jurisdiction over him. Here the same question as to Reserve personnel is presented, whether while they are on inactive duty you would have a jurisdiction over them for something they did while they were on active duty.

The jurisdiction of course would be limited in any case, I should say, by the statute of limitations itself. But we did not provide for the Hirshberg type of case in this code because frankly it was before the Supreme Court and we just did not know what was going to happen.

Mr. ELSTON. I am wondering why you could not reach the whole subject with a very simple provision to the effect that any person who commits any offense and is subject to prosecution under this code may be prosecuted even though he may no longer be in the service, and the only exceptions would be cases which are barred by the statute of limitations.

Mr. LARKIN. There is one concern that I would have—and I do not know the answer, frankly—which has to do with the third type, if you will, and that is the person who serves, is discharged and who neither joins the Reserves or does not reenlist and becomes for all purposes a civilian.

The question I have in connection with it—actually I think if it were possible you ought to be consistent across the boards in those types of cases—is the constitutionality of attempting to retain a continuing jurisdiction over that person since now he clearly is not in the land or naval forces even though while he was in them he did commit an offense which would have made him subject to its jurisdiction if tried at that time.

Now perhaps my concern is exaggerated but I think there is a difficult legal problem in that one type at least.

Mr. ELSTON. Do you not think it would be within the Constitution if they retained jurisdiction only so far as it is necessary to prosecute the case which was committed while the offender was in the service?

Mr. LARKIN. I think there are several cases both ways, frankly, on it, and I do not know that it has ever gone to the Supreme Court.

I am reminded that the Articles of War and the Articles for the Government of the Navy at the present time do contain a continuing jurisdiction of that character insofar as frauds against the Government are concerned.

Mr. ELSTON. Well, does it have to be limited to frauds?

Mr. LARKIN. Well, that also involves a legal question.

Mr. ELSTON. It seems to me that the Supreme Court in the Hirshberg case held as they did solely because we did not have a provision in the law that provided for continuing jurisdiction.

Mr. LARKIN. Yes, that is right. I agree with you entirely, Mr. Elston, but there you see at least Hirshberg when he was tried was in the naval service.

Mr. ELSTON. Well, that may be true.

Mr. LARKIN. Now that is a fortuitous circumstance, perhaps, but he did come under the basic jurisdiction of being in the service. So the difference still exists. Now whether it is a material one or not, I do not know.

Mr. ELSTON. You would have some very absurd situations.

Mr. LARKIN. Exactly.

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Mr. ELSTON. A man might commit murder the day before his term of enlistment was up and step out of the service and could not be prosecuted.

Mr. LARKIN. I think you would have had that case actually in the Durant case, where Mrs. Durant or Captain Durant, whatever her name was, was convicted of stealing the Crown Jewels of Hesse.

Mr. ELSTON. Yes.

Mr. LARKIN. The question there arose: She was on terminal leave and it was considered that she was still in the service. If the case had been brought to trial about 3 weeks later and she had not joined the Reserves, if you will, or reenlisted, then there would have been no way of trying her at all because the offense was committed overseas. The Federal Courts would have had no jurisdiction. And the military would not have had any either.

The question, however, in the last analysis, I should say, is whether you can abide, missing the few cases of that kind, or whether there should be provided across-the-board jurisdiction for people who do not reenlist and are not Reservists. But I agree with you. I think the whole question should be decided as one whole problem rather than by a piecemeal approach. Our difficulty, as far as the reenlisted Hirshberg style, was that it was before the Supreme Court and we just did not know which way it was going to go and we could not forecast it.

Mr. BROOKS. My mind is running along the line Congressman Elston's mind is running. I was wondering whether it would not be well to have a very simple provision for jurisdiction to attach as of the date of the commission of the crime and shall continue until shall we say 5 years after the facts are brought to the attention of the proper authorities, thereby permitting prosecution. Beyond that time the statute of limitations would run on it.

Mr. LARKIN. Well, I should say you might make it subject to the statute of limitations provided in the code. I do not think most statutes of limitations run from the time of the discovery, except in certain fraud cases. Usually they run from the time of the commission of the offense. I think that your idea would be quite an extension. But subject to the statute——

Mr. BROOKS. In our State they have some provision that the prosecuting officer must have some knowledge of the crime so as to permit the prosecution, if it is a major crime, within the period——

Mr. DEGRAFFENRIED. On most major felonies or capital cases we do not have any statute of limitations.

Mr. ELSTON. That is right. In Ohio we have few——

Mr. DEGRAFFENRIED. On capital cases you do not have any statute of limitations.

Mr. LARKIN. That is right. And we provide in cases of murder, mutiny, and several others, that there is no statute of limitations.

Mr. DEGRAFFENRIED. I believe we can put a provision in here, that would be perfectly constitutional, that it should be fixed as of the time the crime is committed and the mere fact that he is discharged at a later date and returns to civilian life ought not to free him from being prosecuted in a military court for an offense that he committed while he was in the service.

Mr. BROOKS. I would limit that to offenses triable by perhaps general court martial, so that just minor infractions of discipline would not be taken advantage of to bring a man back under the jurisdiction of a court martial.

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Mr. DEGRAFFENRIED. That is right.

Mr. SMART. I think right there, Mr. Brooks, that is one of the fears that the ROA seems to have expressed. That if a Reserve happens to say something while on active duty which subsequently happens to incur the disfavor of the people in the Regular service, they could utilize this very section here to pull them back into the service and away from their business for comparatively minor offenses as a harassing movement.

Now I do not say there is any validity to their fears but that is the fear which they expressed.

Mr. BROOKS. It would meet their objection, though, if we classify only major crimes for the purpose of bringing a man back under this code.

Mr. DEGRAFFENRIED. That is right.

Mr. HARDY. I think there is a distinction between that provision with respect to Reserve officers as objected to by the ROA from the thing that we are talking about here because we are providing that the Reserve officers continue under their jurisdiction anyway, are we not?

Mr. LARKIN. Well, if they have committed an offense during the active period, you see. Article 3 does not provide jurisdiction over Reserve personnel for any offense they commit while on an inactive status. It just is a continuing jurisdiction——

Mr. HARDY. If an offense was committed while in active service?

Mr. LARKIN. That is right.

Mr. SMART. Of course, Mr. Brooks, as to the suggestion you made on cases triable by general court martial, it should be pointed out that a general court martial has jurisdiction over all offenses which may be tried by a summary or a special court.

Mr. BROOKS. Perhaps a limitation would be in order.

Mr. SMART. Yes. I think it might be well for the committee to consider the possibilities of amending this article further to provide that court martial could try only those cases involving major offenses which were not triable in the civil courts.

Mr. ELSTON. In other words, if a man committed murder the day before his period of enlistment expired——

Mr. SMART. In the United States.

Mr. ELSTON. Yes; we will say he was in United States and a certain State had the jurisdiction to try the case, they could not try him in the military courts?

Mr. SMART. That furthers, I think, the Reserve idea. Try everything in the civil courts you can if the accused is not on active duty and limit prosecutions to major offenses.

Mr. ELSTON. I think that is a very good suggestion.

Mr. HARDY. Yes.

Mr. ELSTON. After all, the only purpose of this is to avoid a case like the Hirshberg case or any case where a person has committed a serious offense. I do not say it should include minor offenses, but where he has committed a serious offense, he should not be permitted to escape by reason of the fact that he is out of the Army.

Mr. LARKIN. That is right.

Mr. ELSTON. Whereas the same offense committed by a fellow who had just enlisted would bring prosecution.

Mr. LARKIN. That is right.

Mr. ELSTON. It is not fair. And my suggested amendment would be that except as cases are barred by the statute of limitations, juris-

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diction shall continue as to major offenses committed in the service even though a person has left the service. And then we might have what Mr. Smart has suggested. Provided the offense is not one over which the States have some jurisdiction and can proceed with the trial. That is the substance of it.

Mr. LARKIN. I think we certainly would not object to that. And I think we can work out some language. Although most of the comments against this article were that we were trying to encroach and enlarge our jurisdiction, we would be happy with the restrictions of a statute of limitations and not having jurisdiction over what is triable in the civil courts.

Mr. HARDY. I think you should give consideration to the point Mr. Brooks raised a while ago, that you do not permit minor or disciplinary offenses to take a man back into the service for military trial.

Mr. LARKIN. I agree.

Mr. ELSTON. Mr. Chairman, I would suggest if it is agreeable to the other members of the committee, that we have an amendment along this line drafted. Then it can be submitted to the committee for further consideration.

Mr. BROOKS. I think that is an excellent idea. And if there is no objection we can suggest that between now and the first part of next week, if you will, Mr. Larkin and Mr. Smart, work on that.

Mr LARKIN. Fine. Be happy to.

Mr. BROOKS. And also work it so that the Hirshberg type of case will be taken care of.

Mr. LARKIN. Yes, sir.

Mr. DEGRAFFENRIED. Just a suggestion there. Consider the use of the word "felony."

Mr. LARKIN. I think that would be helpful, Mr. deGraffenried, although I hope not necessary. We have tried to avoid in our punitive articles the use of the word "felony." It is unknown in the military law to this time. While it is a common enough word in civil laws, I think specific crimes which are felonies in different States differ. So far we have been successful in not using it, but it is possible that in this case we would have to.

Mr. DEGRAFFENRIED. Of course if there is no such word as "felony" in military law I do not know what word you use. You have to describe in some way the nature of the offense, even if you have to set each specific offense out for which he could be brought back in.

Mr. LARKIN. That is right.

Mr. BROOKS. You might base it on the thought that some offenses have exclusive jurisdiction in the general courts-martial and of course those are major offenses.

Mr. ELSTON. You also have the difficulty, too, about the offense being more serious sometimes to an officer than it is to an enlisted man, and so forth. There are a lot of questions involved.

Mr. LARKIN. Yes. Let us try to submit something to you on that question.

Mr. BROOKS. Yes. Article 4.

Mr. SMART. Mr. Chairman, you have not yet discussed subsection (b) and subsection (c) of article 3.

Mr. BROOKS. I thought the whole thing would be the subject of consideration.

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Mr. SMART. I believe that (b) and (c) will stand on their own merits, without (a), would they not?

Mr. LARKIN. Yes.

Mr. BROOKS. I thought Mr. Elston's idea was to cover all three.

Mr. LARKIN. We can do that when we bring the other back, if you like. (b) is part of a similar philosophy, let us say, so that we could postpone its consideration.

Mr. SMART. O. K.

Mr. LARKIN. Otherwise, it is pretty much on its own feet.

Mr. BROOKS. Is there any objection to (b) and (c) as they are written?

Mr. LARKIN. I might point out in connection with (b) that it is new and while it has been a regulation we did not have much confidence in the stability of a regulation of this character. The notion here purely and simply is that we retain jurisdiction or have a continued jurisdiction in the case where a person is accused of having fraudulently secured his discharge.

Now there were a number of cases during World War II where through some fraud or other a man was able to obtain discharge papers. It was a device, in other words, that was tantamount to deserting except that he was able to furnish himself with the outward legal effects of having been properly discharged.

It was a device, in other words, in which he was able to get out of the services by fraud and had a piece of paper which indicated that it was proper, but in reality it was not any different than a man who just left and deserted and had no piece of paper.

Well, there was a jurisdictional problem in that connection because under the Hirshberg ruling again, for instance, the effect of the discharge was to cut off any offense he had committed while on active duty and if you uncovered evidence that he had fraudulently obtained his discharge and attempted to try him for it, why before you could try him he could challenge the court's jurisdiction by presenting a piece of paper which on its face showed he was legitimately discharged and the court had no jurisdiction over him by virtue of that discharge.

So it was a situation that enabled a person by fraud to escape the consequences of his act and really leave the services and desert in effect. He had a piece of paper which acted as a bar to the services doing anything about it.

For that reason this is put in and that is what it is intended to accomplish: In other words, to give a continuing jurisdiction over a man whose discharge was actually a fraud.

Mr. ELSTON. What do you mean by those words "while in the custody of the armed forces for such trial," on lines 15 and 16? If he is discharged he is not in the custody any longer?

Mr. LARKIN. Oh. May I read the whole article?

Mr. SMART. That refers to after he is apprehended for trail for the fraudulent discharge, Mr. Elston.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. You do not mean a discharge that he forged. You mean one that he obtained by some fraudulent representation?

Mr. LARKIN. Either one. Well, there were cases——

Mr. DEGRAFFENRIED. If he forged a discharge it looks like to me that it would be absolutely void and not considered as anything.

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Mr. LARKIN. He might have forged it or he might have paid some money to some clerk at a separation place and obtained the official papers. He might I suppose in a number of ways obtained papers which were on their face official but which were illegally obtained, however he did it.

Mr. DEGRAFFENRIED. It just looks like to me that those words there would mean that where he had really obtained a discharge it was signed properly but he had obtained it by some fraudulent misrepresentation, rather than to actually forge it.

Mr. LARKIN. I think it would cover both situations.

Mr. DEGRAFFENRIED. It would cover both.

Mr. BROOKS. Is there any objection to that? Did you answer Mr. Elston's question with reference to being in custody?

Mr. LARKIN. I thought Mr. Smart did. The notion was that he is subject to this code while he is in custody awaiting trial.

Mr. ELSTON. Do you not think the words ought to be "shall after apprehension be subject to this code while in the custody of"?

Mr. LARKIN. I think that would certainly not change the sense and would clarify it.

Mr. ELSTON. It makes it a little clearer.

Mr. HARDY. Well he has to be subject to the code before he is apprehended, has he not? Otherwise, how are you going to get authority to pick him up?

Mr. LARKIN. Well, this gives us the jurisdiction to apprehend him.

Mr. SMART. I think the point there, Mr. Hardy, would be, in line 15 after the word "shall," you would put the words "after apprehension." So you presume the first time that he is already subject to jurisdiction and the second time, after you have him, then he is subject to any offense he commits while in custody.

Mr. BROOKS. Yes; your jurisdiction is under that preceding clause there, "Shall be subject to trial by courts martial."

Mr. HARDY. Yes.

Mr. BROOKS. Suppose you put your suggested change there, Mr. Elston, in proper language and we will vote on it.

Mr. ELSTON. Mr. Chairman, I would offer the amendment that on line 15, after the word "shall" he——

Mr. BROOKS. What page now?

Mr. ELSTON. Page 6, line 15, after the word "shall" insert the words "after apprehension."

Mr. BROOKS. You heard the motion, gentlemen. Any objection to it?

Mr. HARDY. No.

Mr. BROOKS. If not, that insertion will be made.

Now what about subsection (c)? Is there any discussion on that?

Mr. LARKIN. I might point out, as we did in the commentary, that that is prompted by a case in California, the circumstances of which are as follows: A man deserted from the Marines and enlisted in the Navy and was given an honorable discharge after his service in the Navy and that discharge was held to operate as a bar to trying him for his original desertion. This is designed to correct that situation.

Mr. BROOKS. You have heard the section or article. If there is no objection to it, excepting for subsection (a), it will stand approved.

We will proceed, then, on article 4.

Mr. SMART (reading):

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ART. 4. Dismissed officer's right to trial by court martial.

(a) When any officer, dismissed by order of the President, makes a written application for trial by court martial, setting forth under oath that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court martial to try such officer on the charges on which he was dismissed. A court martial so convened shall have jurisdiction to try the dismissed officer on such charges, and he shall be held to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary of the Department shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issuance.

(b) If the President fails to convene a general court-martial within 6 months from the presentation of an application for trial under this Article, the Secretary of the Department shall substitute for the dismisal ordered by the President a form of discharge authorized for administrative issuance.

(c) Where a discharge is substituted for a dismissal under the authority of this Article, the President alone may reappoint the officer to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowances.

(d) When an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, there shall not be a right to trial under this Article.

References: A. G. N. Art. 37; R. S., sec 1230 (1875), 10 U. S. C., sec 573 (1946).

Commentary: This article should be read in conjunction with the provision being reenacted in section 10 of this act. The right to trial will apply only in the case of a summary dismassal by order of the President in time of war. (Sec. 10 covers the provisions now found in A. W. 118 and A. G. N. art. 36.)

If the President fails to convene a court martial where there has been an application for trial, or if the court martial convened does not adjudge dismissal or death as a sentence, the procedure followed will be the same as that prescribed in article 75 (d) where a previously executed sentence of dismissal is not sustained on a new trial. This changes the present statutory provisions set out in the references. The change is made because of the doubt, expressed by Winthrop and other commentators, as to the constitutionality of the present provision declaring that an order of dismissal, lawfully issued by the President, shall be void under certain circumstances. Under the proposed procedure it will be possible to achieve the same result—that of restoring the officer.

No time limit has been set on when an application for trial must be submitted. The present statutory provision has been construed to require that the application be made within a reasonable time, which will vary according to circumstances. See Winthrop, Military Law and Precedents, 1920 edition, page 64; Digest of Opinions, Judge Advocate General of the Army, 1912–40, section 227.

Mr. ELSTON. Is that new?

Mr. LARKIN. Partially. I think you will get a better understanding of it if I give you a little background on it. It is somewhat complicated. It stems from the following legislative history. In 1865 the Congress passed a statute, Revised Statute 1230, which gave officers

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a right to trial in the fashion that we have provided in 4 (a) when they had been dismissed by the President.

That was a provision for the Navy and the Army.

The following year, in 1886, article of war 118 was passed, which was construed subsequently by the Court of Claims as not giving the right in the Army to an officer to a court martial after he had been dismissed by the President, in that article 118 repealed Revised Statute 1230.

The original statute had said that if a court martial thereafter exonerated a man the President's dismissal was void. A number of legal opinions hold that court martial cannot so void a dismissal by the President, that the President had the constitutional right of dismissal which is an incident of his right of appointment.

So there has over the years been a difference by virtue of the time in which this article 118 of the Army's was passed. There has been a difference in practice in the Army and the Navy in that the Navy has always construed the law, and it apparently applied to them properly, that a naval officer could have a court martial if he was dismissed by the President where an Army officer could not.

Now that was one divergence or difference that we desired to make uniform and for that purpose put in here this provision that if an officer is dismissed by the President, he can have a court martial.

This 4 (a) applies to the power of the President in time of war only.

One hundred and eighteen itself specifically sets out the manner in which or the circumstances under which an officer can be dismissed from the service and it is either by court-martial sentence or in time of war by the President.

That is reenacted in this bill in the very back of it, in section 10, and is reaffirmed. But section 4 is within the Uniform Code itself because it spells out a court-martial remedy.

In studying that whole problem we felt that if a court martial, having granted an officer now dismissed the right to a court martial on the same circumstances, exonerates him afterward, why then the infamy, if you will, that attaches to this dismissal by the President ought to be ameliorated in some way and for that reason we provided at the end of 4, subdivision (a), that an administrative form of discharge could be substituted for the dismissal.

Mr. ELSTON. What is that—administrative discharge?

Mr. LARKIN. Well, an administrative discharge is one of three: Either an honorable discharge, under honorable conditions or the so-called undesirable discharge. There are in all five types in each service. They have been standardized. They are a dishonorable and a bad-conduct discharge, both of which can be imposed by a court martial only, and then the other three are honorable, under honorable conditions, and undesirable.

Mr. ELSTON. It would not sound very fair to say that if the court martial acquitted the accused or if the sentence adjudged as finally approved or affirmed does not include dismissal or death the Secretary of the Department shall substitute for the dismissal ordered by the President a form of discharge other than honorable, would it? Then why should he be discharged from the service under other than honorable conditions?

Mr. LARKIN. I think it is desirable to have a certain amount of flexibility under those circumstances because it may well be that the officer is not guilty of a specific offense which warrants his dismissal.

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But he may be the type of person who for other reasons of incompetence or just general misbehavior is such that you do not feel he is entitled to an honorable discharge. You see, the dismissal by the President cuts him off and he is out.

Now you are changing the dishonorable feature of that, but he may not be entitled to an honorable discharge under those circumstances.

I recall that that phase of it was criticized by somebody. Somebody suggested, I believe, that it should be honorable or under honorable conditions. They just objected to the third one. But it strikes me that there may be circumstances which would warrant less than an honorable discharge, even though you have not established an offense that warrants an equivalent to a dismissal with dishonor.

Mr. ELSTON. Well, it seems to me that should be another proceeding.

Mr. LARKIN. Well, that is right. That is what it is.

Mr. ELSTON. If he is acquitted of the offense that caused his dismissal in the first place, he certainly should be entitled to be discharged honorably unless he has committed some other offense or his conduct in some other respects warrants another proceeding.

But in the proceeding in which he is acquitted and found to be not guilty it would be meaningless if he was then discharged from the service other than under honorable conditions.

Mr. LARKIN. Well, except that you would have this situation, I think: If you provide that they must substitute an honorable discharge but there are other factors which would indicate that it should be less than honorable, why I just do not see how you would give him the honorable one and then try to take it back and then have another proceeding and do something else with it.

Mr. ELSTON. Were there many cases that warrant this kind of legislation?

Mr. LARKIN. I think there were a few. I do not know of any during the war.

Mr. ELSTON. Well, where does the request come for this rather unusual type of procedure?

Mr. LARKIN. Well, this has been, in one or the other forms, as I outlined in the beginning, in the Articles for the Government of the Navy or the Articles of War since 1865 when Congress first passed it.

Mr. ELSTON. Well, that may be an old statute that is not worth much any more. Have they had occasion to use it in recent years?

Mr. LARKIN. There has been very little occasion. But the point is, since the President undoubtedly has the continuing constitutional power to dismiss somebody, all this does in the rest of its sections is to provide certain remedies in the event that action was arbitrary.

If we can go on a little bit, in section (c) for instance, the committee felt that if a man had been dismissed, that is an officer, by the President in time of war and he was tried by a court martial and was completely exonerated and acquitted in addition to having an honorable discharge as you pointed out, why we are to provide further that there be some means of restoring him to the service again because you see the court martial here will follow the dismissal, which dismissal cuts him out.

And even if you gave him an honorable discharge as substitution after the court martial, his professional career as an officer is at an end. So the committee felt in all justice it was necessary to provide further remedies, in (c), that there should be a provision notwith-

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standing the provisions of the Officer Personnel Act which would enable the President to put him back.

Mr. ELSTON. In the first place the President has the constitutional power to discharge an officer.

Mr. LARKIN. Yes, sir.

Mr. ELSTON. No question about that, is there?

Mr. LARKIN. No, sir; I do not think so.

Mr. ELSTON. You think a law is constitutional that gives a court martial the right to overrule the President and take that constitutional right away from him or at least overrule the effect of it?

Mr. LARKIN. No. I think you cannot change the dismissal. However, you can by court martial thereafter change the dishonorable aspects of it. You see, the President could dismiss him and you cannot by any other action void his action. I do not think there is any difficulty in——

Mr. BROOKS. Mr. Larkin, that subsection (a) of course would permit the President to act and in effect approve the proceedings of the court martial. But what about (b), which says that should the President fail to act the Secretary of the Department shall substitute for the dismissal order by the President a form of discharge authorized for administrative issuance. Is that not taking it out of the President's hands?

Mr. LARKIN. No, sir; I do not think so. It does not change the dismissal but it makes it possible to change the dishonorable effects of it by substituting a different type of discharge—an honorable one. I do not think you can void the President's power to dismiss by any subsequent action, but you can change the circumstances or the effect of that dismissal if by further process you find that the dishonorable effects should not attach to the dismissal.

Mr. ELSTON. I seriously question that.

Now on page 7, the very purpose of the court martial is to determine whether or not he has been wrongfully dismissed by the President. That is the exact wording of your statute, where he makes a written application for trial by court martial, setting forth under oath that he has been wrongfully dismissed, by the President.

Mr. LARKIN. All right.

Mr. ELSTON. Now, if the President has the constitutional right to dismiss him, who has any right to question it?

Mr. LARKIN. Well, I do not think anybody has any power to void the dismissal, but they have a right to question the wrongful aspects of it or the dishonorable consequences that flow from it.

This would not, unless the President himself, in (c), by being enlightened, if you will, by the court martial, decided a wrong was done. Then he at his option alone would reappoint the man and undo the wrong.

But no one else could vacate the action of the President. However the notion originated in 1865 that there should be some method of clearing the man's name, even though he may still stay dismissed.

Mr. ELSTON. Was the constitutionality ever passed on?

Mr. LARKIN. The constitutionality of the right to void the dismissal was passed on and it was said there is no further agency beyond the President that could void the dismissal. Winthrop, I think, is of that opinion.

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And there is an Army judge advocate opinion, which holds that any attempt to undo the President's dismissal is unconstitutional because he has the constitutional power. However, the right to change the dishonorable consequences of it, if it is found by a court martial that he did nothing wrongful, is available.

Mr. BROOKS. I would like to hear from Mr. Smart on this particular point.

Mr. SMART. Thank you, Mr. Chairman.

The first thing to remember about this section is that it is purely administrative. It has nothing to do with the trial, until you get farther down into the provisions. Secondly, it refers only to officers. Now you will find when we get to article 75 of this bill that it refers to restoration after a court martial and it provides exactly the same thing that we find in this article.

I think the thing that shocks the sense of justice of most people is the fact that here you have it possible for the President to dismiss an officer and certainly that is his constitutional right, to do so.

But the officer comes in and asks for a trial and gets acquitted and he still has no assurance whatsoever that he can get rid of that stigma. Heaven only knows what kind of a discharge they may give him.

I am strongly of the feeling that if an officer should subsequently come in and have a court martial and should be acquitted by that court, that the statute should provide that an honorable discharge will be given that officer.

Now you cannot force the President to reappoint him. That is matter within the option of the President. But if he is acquitted I cannot escape the feeling that he should be accorded an honorable discharge.

Mr. HARDY. Now right on that point, the only effect of a court martial, in this case is to fix the degree of stigma which attaches to this dismissal, is that right?

Mr. SMART. That is correct.

Mr. LARKIN. Yes.

Mr. SMART. That is correct, as I see it.

Mr. LARKIN. That is right.

Mr. HARDY. In other words, a court martial could determine one of three forms of discharge to be issued.

Mr. LARKIN. No. The Secretary, after receiving the court-martial findings.

Mr. HARDY. Yes. But it would be based on the judgment of the court martial?

Mr. LARKIN. That is right.

Mr. HARDY. So that actually the court martial is purely for the purpose of adducing the evidence to indicate the degree of significance which is to attach to this man after he goes out of the service.

Mr. LARKIN. If any.

Mr. HARDY. Yes, if any.

Mr. BROOKS. And furthermore, to give the President the opportunity if he wants to reinstate him in the service?

Mr. LARKIN. That is right, you see.

Mr. ELSTON. Well, he can do that anyhow.

Mr. LARKIN. Well, he might, but now under the officer personnel act, the man goes down to the bottom of the list and gets a new number and things of that character follow.

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Mr. SMART. Actually this section is much broader from the standpoint of the officer so dismissed than existing law. The provisions in this article are something which may be helpful to an officer which have not theretofore been provided.

Mr. BROOKS. This is something we discussed in the personnel act but did not take any action in reference to it.

Mr. LARKIN. Well, it covers a very few number of cases.

Mr. DEGRAFFENRIED. On your thought there that a man might be acquitted and yet at the same time his conduct might have been such that he is not entitled to an honorable discharge but to some other kind of discharge, could you not have some kind of provision there that if he were acquainted he should be given an honorable discharge unless within a certain time, say 30 days or whatever time is considered reasonable, new charges were preferred against him and established or something of that kind?

Now you have a thought there, that you had in your mind, that when a man is acquainted he still might not be entitled to an honorable discharge. I think he should, unless some other kind of discharge is preferred against him which is established so that he should not be entitled to it.

Mr. LARKIN. I do think that would make a little more formal the discretion on which the Secretary would ultimately depend.

Mr. DEGRAFFENRIED. Where he is acquitted and no other charges are preferred against him, do you not think that he should have an honorable discharge?

Mr. LARKIN. I would expect he would get it in almost all circumstances. That is exactly what I would expect. But I just do not know——

Mr. BROOKS. There is this about it, though. Now he convenes this at his own request. Suppose, for instance, a man is tried for murder and dishonorably discharged, maybe, on a charge of manslaughter.

Suppose later on at his request a court martial is convened and he is acquitted of that but he has a bad record behind that. While he is acquitted of the offense specifically for which he has been released from service the question naturally is going to be: Has he requested the court martial to go into the question of the guilt or innocence of these preceding offenses.

You see the point I have in mind there?

Mr. LARKIN. Well, I got lost part way. I was thinking of the double jeopardy situation in the beginning of your question.

Mr. BROOKS. My point is this: He invokes this remedy at his own request.

Mr. LARKIN. That is right.

Mr. BROOKS. Would he be willing to invoke the same thing should some other part of his record come under scrutiny?

Mr. LARKIN. You mean, would he have a right to ask for a court martial in the event he was accused of something which was not an offense, but some other action?

Mr. BROOKS. Would the court martial have a right to go into something that he did not request?

Mr. LARKIN. Not unless it was an offense.

Mr. BROOKS. After he has been discharged. They have the right because under this article we permit him to request it.

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Mr. LARKIN. That is right.

Mr. BROOKS. But, now, if he does not request another part of his record to be scrutinized by the court martial, will the court martial have that right to do it?

Mr. LARKIN. If he does not request, he cannot be tried. He is out. He is a civilian now.

Mr. HARDY. I believe the language here covers the point you raised, Mr. Brooks. It says "shall convene a general court martial to try such officer on the charges on which he was dismissed."

Mr. LARKIN. You could not try him for anything else at all. You could not try him for that unless he asked for it.

Mr. BROOKS. You could not go back over his record as far as that is concerned to see whether he has a good record or bad record. But you pin it exactly on that one charge for which he has been discharged.

Mr. LARKIN. Yes.

Mr. SMART. I think, Mr. Chairman, that is also the answer to Mr. deGraffenried's question a moment ago, where there might be a possibility of preferring other charges against a man. I think one of the implications possible in that situation would be that they could try him piecemeal.

They could hold back things on him and just try him piecemeal until they finally got one to stick on him. Now if they have any sound basis upon which to proceed they ought to file all the charges and specifications that were involved in the dismissal of the officer in the first place and he should not be subjected to a piecemeal prosecution until heaven knows how long.

Mr. deGRAFFENRIED. I agree with you there, Mr. Smart. But I understood you to say a few moments ago that you thought that if he was acquitted he should receive an honorable discharge.

Mr. SMART. I certainly do.

Mr. deGRAFFENRIED. But on the other hand, as Mr. Brooks suggested, the man's record might be bad in such a general way that even though he was acquitted of murder or whatever particular charge he had there he still might not be entitled to an honorable discharge. That is the thought, as I understand it, that Mr. Brooks had there.

Mr. LARKIN. May I point out in that connection, we have provided that in the event the court martial acquits him, in which case I would normally expect there would be an honorable discharge by administrative process, or even if the court martial convicts him but does not sentence him to dismissal—they think he is guilty but they do not think that the sentence ought to be dismissal—well under those circumstances I should think that you would hesitate about giving him or substituting for it an honorable discharge.

You should more appropriately give him an undesirable discharge. He may be convicted here and still have a remedy, but would not be entitled to the honorable one.

If you notice near the end of (a), it says—

> The court martial may as a part of its sentence adjudge the affirmance of the dismissal, but if the courts-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed does not include dismissal or death

but is nevertheless a conviction, you can substitute an administrative discharge and in those cases probably less than honorable would be appropriate.

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Mr. SMART. I think so, exactly. I merely singled out the case where he is subsequently acquitted and you leave it here purely to the discretion of the Secretary. You do not assure that officer he is going to get an honorable discharge.

Now you go further in section (b) here. This provides what I think is a right without a remedy. Here is a fellow who comes up, he has been dismissed and he asks the President to convene a court.

Six months passes and the President does not do a worldly thing about that and here sits the officer trying for a trial he cannot get. I think in that case, if he is refused a trial at which he may present the evidence, I think there again an honorable discharge should be substituted for the administrative discharge, the meaning of which you or I do not know.

Mr. BROOKS. It seems to me this, that this is a most unusual remedy and I am just wondering will this reopen any of those 24(b) cases.

Mr. ELSTON. They were not discharged by the President, were they?

Mr. BROOKS. They were discharged from the service. Who discharged them?

Mr. LARKIN. I do not know whether they were dismissals by the President or not. The President of course can drop from the rolls an officer who has been absent for 3 months or who has been convicted and is incarcerated in a Federal penitentiary.

Or an officer of course under the Officer Personnel Act can be discharged administratively if he is passed over twice or if there is a finding of incompetence. So this is to this wartime power of the President's to dismiss.

And from knowledge and information, I think there have been very, very few over the years.

Mr. BROOKS. This does not say it shall be used only in time of war, though.

Mr. ELSTON. It does not say that.

Mr. BROOKS. Is that limited to wartime?

Mr. LARKIN. Yes, it is, because the President can only dismiss under the provisions of section 10 of this act. If you will look at the very back of the act, under section 10, it is page 97, it says "No officer shall be dismissed from any of the armed forces except by sentence of a general court martial or in commutation thereof or in time of war by the order of the President.

Mr. ELSTON. What form does a Presidential dismissal take? Just dismissal from the service?

Mr. LARKIN. Yes, I believe so. Have you ever seen one, Colonel?

Colonel DINSMORE. No.

Mr. ELSTON. When was the last time an officer was ever dismissed by the President?

Colonel DINSMORE. I do not remember that, Mr. Elston. I would have to look that up. I would imagine it has been many years ago.

Colonel MAXEY. As a matter of fact, I think it was a short time ago. One Benny Meyers was dismissed by the President.

Mr. ELSTON. Well, Benny Meyers was subject to court martial and could have been tried and dismissed other than by the President. Are there any cases other than that? I mean you did not need the

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statute for the Benny Meyers case. If you had the statute Benny Meyers might have appealed and gone through a lot of trial.

Mr. LARKIN. Under this, you see, he could have asked for a trial.

Colonel DINSMORE. I would like to correct my statement. I remember another case, in which an officer was tried and convicted by a civil court and dismissed by order of the President. That was maybe 15 years ago.

Mr. ELSTON. Well, it can only be done during wartime. Was there a World War I case?

Colonel DINSMORE. No, that was from a different authority.

Mr. LARKIN. That was from the dropping of the rolls.

Mr. ELSTON. Oh.

Mr. HARDY. That is covered, though, back there in section 10.

Mr. LARKIN. That is right.

Mr. BROOKS. My idea is this, gentlemen. This is a most unusual remedy. It is going to be used very, very seldom. If an officer is out of service a long time and then by his own volition asks for another trial and they reverse him preceding a finding of dismissal, there should be lots of latitude given to help him or to help the service.

Mr. DEGRAFFENRIED. I kind of agree with you.

Mr. BROOKS. And this does give him a most unusual remedy. It seems to me we ought to give them a good deal of discretion in the use of it.

Mr. ELSTON. Of course it could not be used unless we have another war, could it?

Mr. LARKIN. It could not be this kind of a dropping, that is right.

Mr. SMART. I think what you would find in this type of case—would be the type of dismissal involving an officer who had committed a group of more or less continuous or recurring infractions which were entirely inconsistent with the behavior of an officer.

Now, of course you could try him for conduct unbecoming an officer, but it might be such a border-line case that you were fearful of not being able to convict in a court martial but you were convinced on the other hand that he just has no business being an officer.

Now, the cases, I understand, are rare. Maybe we are borrowing a lot of trouble that we do not need to borrow, I do not know. Captain, have you any views about it?

Captain WOODS. What I said to you was supposition on my part. I have no personal knowledge of any case in which an officer has been dismissed by the President in time of war in the Navy.

Mr. ELSTON. There is no question but what a person who receives an honorable discharge is entitled to certain rights and privileges that he would not get under a Presidential discharge, is that not correct?

Mr. LARKIN. I think so, yes, sir.

Mr. ELSTON. Under the circumstances, then, you are giving a court martial the authority to give to a dismissed officer some rights and some privileges which the President by virtue of his discharge said he was not entitled to, and I still question the constitutionality of it.

Mr. LARKIN. Well, I cannot add anything by repeating myself again.

Mr. ELSTON. No.

Mr. LARKIN. Because I cannot prove it, either.

Mr. BROOKS. What is the pleasure of the committee in reference to this?

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Mr. HARDY. I have one other question, Mr. Brooks. I do not know whether it is particularly significant, but there is no time limit specified in here as to when such officers might make a written request.

At least I have not seen any. Conceivably a man might be dismissed and make a written request 10 years afterward.

Mr. SMART. Which would be no good.

Mr. LARKIN. I think that has been construed by a case, Mr. Hardy. The construction that I have in mind—perhaps it was a digest of opinions of the Judge Advocate General of the Army—is that it must be in a very short time. A reasonable time would be the standard, I should say.

And reasonable had been construed in that connection as very short, I think, several days afterward.

Mr. HARDY. I noticed that reference back here. But certainly as far as the bill itself is concerned I do not see anything here that would require it.

Mr. BROOKS. What is your pleasure, gentlemen?

Mr. HARDY. It is all right with me.

Mr. BROOKS. Subsection (a).

Mr. HARDY. I think it will probably work all right.

Mr. BROOKS. All in favor of taking subsection (a) as it is say "Aye."

Mr. ELSTON. Mr. Chairman, I am not in favor of any part of article 4, but I have an open mind on the subject and if I can convince myself that it is all right I will go along with it. I just cannot get it out of my head that you have any rights after the President has ordered a dismissal as Commander in Chief of the Army.

He dismisses by virtue of a constitutional right that nobody can can interfere with. Congress has no right to interfere with it. No one has any right to interfere with it. To come along and say that you can give a man a different kind of a discharge than the President gave him, and give him rights, privileges and emoluments and everything else, that he would not be entitled to under the President's order, is not proper in my opinion. I do not think we have any right to do it.

Mr. BROOKS. Well, I am not questioning the remark of Congressman Elston at all. My view on this is largely this: It has been there since 1865. It has caused no trouble to date. It has not been thrown out by any court yet.

Mr. ELSTON. Well from 1865, Mr. Chairman, until 1898 we did not have any war.

Mr. BROOKS. We hope we do not have any more.

And in reference to changing discharges we set up a board that permits the change of all discharges, as I understand all dishonorable discharges, and that board reviews these things constantly.

But as I say I am perfectly willing, if the committee wants to, to let it go over. That would also be the subject of further thought.

Mr. ELSTON. I think there is a difference, Mr. Chairman, in the review of a case by the board of review. The board of review is not acting by virtue of any constitutional authority but is acting by virtue of authority which Congress conferred upon it, and is reviewing the decision of courts-martial trial provided for by congressional action.

Mr. LARKIN. I do not want to belabor the subject, certainly. I do not think it warrants more of your time.

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Mr. BROOKS. No; I do not think so either.

Mr. LARKIN. But, in connection with it, I do want to draw to your attention an objection specifically made so you will have it in mind when you decide, and that was made by Colonel Oliver, if you remember, to the statute-of-limitations provision.

He did not think that an officer should be required to waive the statute in the event he asked for a subsequent trial. I do not think that should cause any trouble because actually the officer is asking for a device to better himself, and I think it is appropriate that he waive it.

And in addition to that, by virtue of the reasonable time under which he has to ask for it, I do not think the question arises.

Mr. DEGRAFFENRIED. Mr. Larkin, do you think it might be wise to put in the number of days he has a right to ask, or do you think what you have there will control that sufficiently?

Mr. LARKIN. I think so, Mr. deGraffenried.

Mr. BROOKS. Tell me, is that a part of the Army's Articles of War now?

Mr. LARKIN. Well, section 10 in the back of this bill is a part of the Army's now, which does not give the right to a trial thereafter. The Navy, on the other hand, since 1865 has had a provision which gives the right to a trial thereafter just as we have provided.

Mr. BROOKS. I would like to ask you in reference to subsection (d), this subsection (d) refers to a condition of being dropped from the rolls by the order of the President. Of course (a) refers to dismissal by the order of the President.

Mr. LARKIN. Yes.

Mr. BROOKS. There is quite a difference between the two; is there not?

Mr. LARKIN. That is correct. And I think for the legislative history I would like to say that the dropping from the rolls there means to us the same thing that it means in section 10, and that is that it is the result of 3 months' absence or confinement in a penitentiary after conviction of an officer.

Mr. BROOKS. Well, let us pass that one by also and we will come back to it later on.

What about article 5; Mr. Smart?

Mr. SMART (reading):

ART. 5. Territorial applicability of the code.

This code shall be applicable in all places.

References: Preamble, Articles of War; proposed A. G. N., arft. 5 (c).

Commentary: This article reenacts the present Army provision. It is not in conflict with the provisions in article 2 (11) and 2 (12) of this code, which make certain persons subject to the code only when they are outside the United States and also outside certain areas. The code is applicable in all places as to other persons subject to it. Previous restrictive provisions on this subject in the AGN have given rise to jurisdictional problems which this language will correct. (See Keeffe Report, p. 262 ff.)

Mr. BROOKS. Any objection to that? If not, then it will stand as read.

Article 6.

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Mr. SMART (reading):

ART. 6. Judge advocates and legal officers.

(a) The assignment for dtuy of all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be subject to the approval of The Judge Advocate General of the armed force of which they are members. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is authorized to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with The Judge Advocate General.

(c) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case shall subsequently act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

Reference: A. W. 11, 47a.

Commentary: Subdivisions (a) and (b) are derived from A. W. 47a. There are no similar provisions in present Navy law. Subdivision (a) differs from A. W. 47a in order to make clear that orders assigning judge advocates do not have to be actually issued by the Judge Advocate General but shall be subject to his approval, although issued by the Adjutant General or Bureau of Naval Personnel.

The purpose of subdivision (a) is to place judge advocates and law specialists under the control of the Judge Advocate General. Subdivision (b) not only authorizes direct communication within military-justice channels but also enhances the position of staff judge advocates and legal officers by requiring direct communication between such officers and their commanding officers.

Subdivision (c), which is based on the sixth proviso of A. W. 11, is designed to secure review by an impartial staff judge advocate or legal officer.

Mr. BROOKS. Are there any questions about that?

Mr. SMART. I have a question, if none of the rest of you have.

Mr. BROOKS. Mr. Smart.

Mr. SMART. I would like to clarify for the record the meaning which comes from the change in the wording of this article as contrasted to the similar article in the Articles of War, revised.

Article 6 (a), line 18, refers to the assignment of judge advocates and says "shall be subject to the approval of the Judge Advocate General." You remember in the so-called Elston bill it was stated that the Judge Advocate General would assign them, the idea being there that the Judge Advocate General would probably know better than anyone else which of his officers would fit best with certain commands in the field.

Now to say that the Judge Advocate General will assign seems to presume that he will be a personnel officer on a part-time basis and perhaps there should be better wording than that if the committee still wants assignments of judge advocates to be made on the recommendation of the Judge Advocate General.

But that particular wording in there has been subjected to considerable criticism, if not in hearings certainly to me outside of the hearings.

Mr. ELSTON. Can we find out, Mr. Chairman, why the language of the previous bill was not used? What reason was there for the change?

Mr. LARKIN. It was principally for administrative purposes, rather than by a virtue of an intent to effect a substantive change. The

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Elston bill as I recall it provided that the judge advocates shall be assigned by the Judge Advocate General after consultation with the commander.

In the first place, for all services it seemed to involve the personal consultation of the Judge Advocate General with commanders and his assignment of them which from an administrative point of view was a tremendous extra job for him and in connection with the Navy particularly a considerable administrative conflict with the Bureau of Personnel which handles personnel administration.

In order to preserve what we thought was the same notion and to make it administratively more feasible, why we reworded it here so that they must be subject to the Judge Advocate General and have his approval, if you will, without his initial assigning and going through all those administrative practices.

There is one other item that was considered from an administrative point and that was, for instance, the assignment of judge advocates to some of the particularly large commands. For instance, I think Admiral Nimitz had four or five judge advocates assigned to his staff.

For the Judge Advocate General to be required to go to Admiral Nimitz each time in connection with the fourth and the fifth and the sixth and consult with him and then do the assigning was out of the question.

Under those circumstances it seemed to be involving such a large amount of time of both of those officers that the same effect would be achieved by this. Now that is the notion behind it.

Mr. ELSTON. We gave a lot of thought to that last year. Of course we were trying to get away from command influence as much as possible and satisfy the complaints—and they were certainly heavy—about too much command influence. We thought this was one way we could do it.

Now if the command authority does the assigning and the Judge Advocate General simply rubber stamps the assignment I do not believe you are going to meet the criticism that was offered before we passed our bill last year.

Mr. LARKIN. I do not think that the commanding officer is to do the assigning as contemplated by this but that the Bureau of Personnel subject to the approval of the Judge Advocate General handles that administrative aspect of it, in the same way as the personnel services.

It is not that the commander appoint his own staff judge advocate and then get the concurrence as much as the Bureau of Personnel with the concurrence of the judge advocate. Would that be the way it works, Captain?

Captain WOODS. Yes.

Mr. LARKIN. Could you fill in on that in any way?

Mr. SMART. I think Colonel Maxey has an inquiry.

Mr. BROOKS. Colonel.

Colonel MAXEY. Mr. Chairman, the Air Force did not object to the Elston bill at all and we anticipated not the slightest bit of difficulty with any of those provisions. We did not, nor did the Army, read the Elston bill as requiring the Judge Advocate General to personally assign people.

Nor did we consider it to mean that the Judge Advocate General would personally have to talk with the commander in the field. The bill did not so require. We interpreted that to mean that the Judge

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Advocate General would assign Colonel So-and-So to such and such a command by requesting the proper personnel officer to issue the order.

He would not do it personally and had no intention of doing it personally. Nor did we consider that General Harmon, the Judge Advocate General of the Air Corps, would have to call General Stratemeyer personally and say "Will you accept so-and-so?"

We construed that to mean that such and such an officer would be offered to General Stratemeyer as judge advocate. Back would come a letter either signed by General Stratemeyer or by his adjutant saying that such and such an officer is acceptable to his command, and then the order would be issued by Personnel. But the Air Force did not oppose the Elston bill as written.

Mr. BROOKS. You read in there implied authority to delegate?

Colonel MAXEY. As is true in everything except judicial functions, yes, sir.

Mr. LARKIN. The language of the Elston Act is not entirely clear. I think it is susceptible to Colonel Maxey's interpretation, but the language was:

> All members of the Judge Advocate General's Department will be assigned as prescribed by the Judge Advocate General after appropriate consultation with commanders on whose staffs they may serve.

I think it is probably susceptible to the inference or the construction that the judge advocate personally consult with the commander personally in all cases, all the time. We may well have misconstrued what you intended in the Elston Act, but we thought that this language did about the same thing with greater administrative freedom.

Mr. BROOKS. Well, does not this give the absolute power of veto to the Judge Advocate General?

Mr. LARKIN. I would say so.

Mr. BROOKS. And under that interpretation, would he not have a right to delegate some of that authority, subject to his veto?

Mr. LARKIN. I should say the Assistant Judge Advocate General or others would perhaps handle it for him, after the Bureau of Personnel has submitted to him the names of those whom they contemplate assigning as staff judge advocates.

Mr. ELSTON. Let me ask: Have the services encountered any tremendous administrative problem by reason of that provision that was in our bill last year?

Mr. LARKIN. Now, their experience dates from February, and under the construction if they are so construing it that the judge advocate does not have to consult personally with the commander anyhow, why I do not know. Perhaps they are not.

Mr. ELSTON. But he initiates the assignment. There is the feeling that he at least initiates the assignment.

Mr. LARKIN. Yes.

Mr. ELSTON. It is just that far removed from command influence. I do not see where the great administrative problem would arise.

Mr. LARKIN. Well, I am not completely familiar with the Navy organizational structure which involves the Bureau of Naval Personnel. Can you add anything, Captain?

Captain WOODS. Our thinking is that the Judge Advocate General does not want to have to go into the details of keeping an audit of amounts of moneys expended or making estimate of appropriations or

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otherwise keeping track of quarters available and all those things that go into the detailing of officers.

His approval here would give him the veto power. No man could be sent unless he concurred.

Mr. LARKIN. In other words, he is really certifying by his concurrence that the man is an appropriate one.

Captain WOODS. If I may go off the record?

Mr. BROOKS. All right, off the record.

(Discussion off the record.)

Mr. BROOKS. On the record.

Now I would like to ask this question: How would you think this verbiage would sound: "The assignment for duty of all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be made by the Judge Advocate General's Department subject to the approval of the Judge Advocate General?"

Mr. SMART. Or you could say "shall be made upon the recommendation of the Judge Advocate General." Then it will initiate in the Judge Advocate's office and not in Personnel.

Mr. ELSTON. That is right.

Mr. BROOKS. "Shall be made upon the recommendation." Would that suit everybody?

Mr. DEGRAFFENRIED. That suits me.

Mr. LARKIN. That is fine.

Captain WOODS. That is all right.

Mr. BROOKS. If there is no objection, then, to that change, all right. Mr. Elston moves that the change be made and it is so ordered.

What about section 8?

Mr. LARKIN. That is a restatement of the Elston Act.

Mr. BROOKS. There is no dispute about that.

Mr. LARKIN. No.

Mr. BROOKS. What about (c)?

Mr. LARKIN. That is borrowed or adopted from the sixth proviso of article of war 11. It is now in the Articles of War and is designed of course to insure impartial staff judge advocates.

Mr. BROOKS. I do not believe there is any dispute about that.

If there is no objection, then the article—article 6—as amended will stand approved by the committee.

Mr. SMART (reading):

ART. 7. Apprehension.

(a) Apprehension is the taking into custody of a person.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this code may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) All officers, warrant officers, petty officers, and noncommissioned officers shall have authority to quell all quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part in the same.

References: A. W. 68; Naval Justice, chapter 6.

Commentary: This article should be read in conjunction with articles 8–14, which codify and enact present practice as to apprehension and restraint of persons subject to the code.

Subdivisions (a) and (b) are new and relate in particular to military police. Subdivision (c) is derived from A. W. 68.

Mr. BROOKS. Mr. Larkin, would you want to give an explanation there?

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Mr. LARKIN. This is new in format, more than in anything else. Mr. Chairman. In our study of the Articles of War and the Articles for the Government of the Navy we found a certain duality of meaning in the words "arrest," "restraint," "confinement," and words of that character, and we adopted this scheme to clarify the defintitions of those words and started off with "apprehension" in article 7.

The balance of the whole subject is pre-pre-trial procedure, really, being the initiation of the case from the apprehension standpoint.

Article 7, then, is part of a whole revision, the rest of which is contained in articles 9 and 10 and I think just clarifies it. It clarifies the whole notion of what is arrest, restraint, confinement, and so forth.

Section (c) specifically is borrowed from subdivision (c) of article of war 68. But it is just a general simplification.

Mr. BROOKS. It is a rehash of that article?

Mr. LARKIN. That is right.

Mr. BROOKS. Is there any further discussion on this?

Mr. ELSTON. I think the section is satisfactory, Mr. Chairman. Of course it is a little more liberal than pertains in civil life. You cannot arrest on reasonable belief, except as to felonies. An officer cannot go out and arrest on a reasonable belief that a misdemeanor has been committed. He must see it committed.

Mr. LARKIN. That is right.

Mr. ELSTON. He may arrest on a warrant if he has a warrant, but without a warrant he cannot arrest except in a felony case where if it is on a reasonable belief the belief is that the offense has just been committed and not committed last week or some other time.

Mr. LARKIN. That is correct, Mr. Elston.

Mr. ELSTON. To that extent we go beyond the authority of arresting officers in civil cases. But we can appreciate the fact that in the military they do not have the same opportunity for obtaining warrants and the like as they do in civil courts.

Mr. LARKIN. I think that is just the point.

Mr. ELSTON. I do not see any particular objection.

Mr. BROOKS. And the emergencies, too, are greater.

Mr. LARKIN. That is right.

Mr. BROOKS. So if there is no objection we will approve article 7 and pass on to article 8.

Mr. SMART. Are you ready to proceed with 8?

Mr. BROOKS. Yes, "Aprehension of deserters."

Mr. SMART. I thought Colonel Dinsmore had a question on 7.

Mr. BROOKS. Colonel, do you have a question on 7?

Colonel DINSMORE. Well, it has been pointed out to me or at least this suggestion has been made that subsection (c) limits the authority of officers, warrant officers, and noncommissioned officers to apprehend persons who take part in quarrels, frays, and disorders. It eliminates the power to order officers and others into arrest.

Now I am frank to say that I have not thoroughly digested that. I suggest you pass that.

Mr. SMART. We will go ahead with 8, Mr. Chairman.

Mr. BROOKS. All right.

Mr. SMART (reading):

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ART. 8. Apprehension of deserters.

It shall be lawful for any civil officer having authority to apprehend offenders under the laws of the United States or of any State, District, Territory, or possession of the United States summarily to apprehend a deserter from the armed forces of the United States and deliver him into the custody of the armed forces of the United States.

References: A. W. 106; 35 Stat. 622 (1909), 34 U. S. C., section 1011 (1946) (arrest of deserters).

Commentary: This article incorporates references with minor changes of language.

There was one suggestion made by Mr. Farmer of the War Veterans Bar Association, that we include in this particular section a. w. o. l. cases. I do not see the validity of that, Mr. Chairman, inasmuch as if a man is a. w. o. l. for any length of time he goes from a. w. o. l. to desertion and immediately becomes subject to this article.

We are not going to worry about him as long as he is purely in a. w. o. l. status. I think the section is all right.

Mr. LARKIN. Otherwise, it is just a reincorporation of the present article of war 106, with a few grammatical changes.

Mr. BROOKS. I think we understand it pretty well.

Then, Mr. Smart, if you will read 9.

Mr. SMART (reading):

ART. 9. Imposition of restraint.

(a) Arrest is the restraint of a sperson by an order directing him to remain within certain specified limits not imposed as a punishment for an offense. Confinement is the physical restraint of a person.

(b) An enlisted person may be ordered into arrest or confinement by any officer by an order delivered in person or through other persons subject to this Code. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted persons of his command or subject to his authority into arrest or confinement.

(c) An officer, a warrant officer, or a civilian subject to this Code may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order delivered in person or by another officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person shall be ordered into arrest or confinement except for probable cause.

(e) Nothing in this Article shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

References: AGN, articles 43, 44; M. C. M., paragraphs 19, 20; Naval Justice, chapter 7.

Commentary: Subdivision (a) clarifies the meaning of terms used by the armed forces. In present Army practice "arrest" refers both to apprehension and to a type of restraint. In Navy practice "close arrest" would fall within the definition of confinement.

Subdivisions (b), (c), and (d) incorporate present Army and Navy practice. See article 97 for offense of unlawful detention.

Subdivision (e) is included to provide for custody of persons apprehended until proper authority is notified.

Mr. BROOKS. Is there any discussion on article 9?

Some suggestion was made during the course of this general discussion in reference to transposing the word "only" as I recall. Instead of reading as it does, under section (c), it will read "an officer, warrant officer, or a civilian subject to this code may be ordered into arrest or confinement by a commanding officer to whose authority he is subject only"—transposing that word "only" to the changed position in the sentence.

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Mr. SMART. I think that was the suggestion of Colonel Oliver of the Reserve Officers Association, if I am not mistaken. It is purely a choice of words as to which is the better. Frankly, I do not think there is much to be gained one way or the other, Mr. Brooks.

Colonel DINSMORE. The question has been raised as to whether or not this covers oral orders only and excludes written orders. It says "orders delivered in person or by another officer."

Mr. SMART. That could easily be corrected by inserting after the word "order" on page 25 "oral or written."

Mr. BROOKS. What subsection is that?

Mr. SMART. That is at the bottom of page 10, subsection (c), on line 25.

Mr. BROOKS. Yes.

Mr. SMART. There is some ambiguity as to what kind of order is intended; is it oral or written, and I suggested an amendment after the word "order" to insert "oral or written."

Mr. BROOKS. In the sentence which begins: "The authority to order."

Mr. SMART. Yes; "by an order delivered in person by another officer." That is on line 25.

Mr. DEGRAFFENRIED. On the bottom of page 10, Mr. Brooks.

Mr. BROOKS. I am using the annotated copy. All right.

You heard that suggestion. I will put it in the form of a motion. Is there any further discussion on it? Any objection? If not, then we will adopt that amendment.

I would like to ask this question of Mr. Larkin on this: Under subsection (d) "no person shall be ordered into arrest or confinement except for probable cause"—does that clash with the preceding section which we have just read which permits arrest on reasonable belief?

Mr. LARKIN. No, because I think the other one has to do with the initial apprehension and this one has to do with the more formal procedures that are taken after the apprehension, when a man is put into a formal state of arrest, which may mean he is restricted to an area or a place or he is specifically put in confinement.

Mr. BROOKS. This will meet to some extent the suggestion made by Mr. Elston there, that we are rather liberal in permitting the arrest upon reasonable belief, but a screening-out process will occur here in reference to a more permanent status.

Mr. LARKIN. I think in this one, Mr. Chairman, we come, as to this notion of probable cause, closer to the civilian idea of the circumstances under which a man should be either restricted or incarcerated.

Mr. BROOKS. Any further questions on that? Any further discussion on this article? If not, we can adopt this.

And then I will entertain on behalf of the committee a motion to adjourn.

Mr. ELSTON. Off the record.

(Discussion off the record.)

Mr. BROOKS. Without objection, the committee is now adjourned until Monday morning at 10 o'clock.

(Whereupon, at 4:30 p. m., the subcommittee adjourned to reconvene on Monday, March 21, 1949, at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

MONDAY, MARCH 21, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will please come to order.

Friday, gentlemen, when we adjourned as I recall we had finished article 9.

Mr. SMART. Right.

Mr. BROOKS. And we were prepared to start on article 10. That is right, is it not?

Mr. SMART. That is correct, Mr. Chairman.

Mr. BROOKS. All right, sir, if you will give us a start by reading article 10, we will be grateful to you.

Mr. SMART (reading):

ART. 10. Restraint of persons charged with offenses.

Any person subject to this Code charged with an offense under this Code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court martial, such person shall not ordinarily be placed in confinement. When any person subject to this Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

References: A. W. 69, 70; A. G. N. article 43, 44; Naval Justice, pages 77–78.

Commentary: This article is derived from A. W. 69 and 70, and conforms to present naval practice. The provision as to notification of the accused is new.

Mr. BROOKS. Is there any comment on that article?

Mr. ANDERSON. Well, Mr. Chairman, is this the article in the bill that has to do with the length of time that a man will be placed in confinement and held there pending his trial?

Mr. LARKIN. It is one of the articles, Mr. Anderson, that touches on that point. The last sentence in it is pertinent—

When any person subject to this Code is placed in arrest or in confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

That is a direction to the authorities in charge to go forward. It says "immediate steps."

Mr. ANDERSON. What does that mean?

Mr. LARKIN. Well, that means that the charges against the accused must be considered and the authorities who have the responsibility to

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consider them must decide whether or not they are going to order a pretrial investigation and process the case and whether the pretrial investigation shows that the crime has probably been committed and he is the man and to go ahead and try him.

Mr. ANDERSON. Well, is there anything else in the code that sets any sort of a time limit on the length of time that a man can be held in the brig pending his trial?

Mr. LARKIN. There is no provision as to hours or days. There are several other provisions which direct speedy trials. However, there is one article that provides in peacetime that you cannot try a man without his consent in less than 5 days after you have served him with the charge in a general court and 3 in a special.

The idea was to provide that there be a speedy trial but not one that is so speedy that the man cannot prepare his own defense.

Mr. ANDERSON. Well, I think of the cases that occurred—I think numerous times during the war and probably in all branches of the service, although I was more familiar with the Navy side of it where a fellow was put in the clink and held there for weeks, sometimes months, before he was brought to trial.

I am just wondering if we cannot do something in this code to insure the fact that the man is given a trial within a certain length of time or as I understand the California law reads it is that if he is not brought to trial within 30 days the charges are dismissed and he is released, because a man can be held for many weeks even under the terms of this code and in spite of the fact that it says "immediate" if the exigencies of the occasion are that he is a long way from the mainland or that he is confined aboard ship, it does not work out.

I am just wondering what is being done to be sure that he is brought to trial within a certain length of time so he is not held in confinement for too long a time prior to the confinement.

Mr. DEGRAFFENRIED. One thing we have to consider is this, though. You take the case where a prosecuting witness might be seriously injured in some kind of a fray. The man charged with assaulting him may be held and this man assaulted is in the hospital and they could not use him as a witness until he got well to come to court unless they got his deposition which is not quite as satisfactory as having a man on the witness stand where you can hear his testimoney and see his demeanor and give the defense counsel an opportunity for cross-examination.

And if we fix a definite time limit there, why it might be that a case would have to go out before this prosecuting witness was able to come to court. And where we use this word "immediate" here, that is like using "forthwith," which means to go ahead. I believe that is just about as close as we can get to it.

If we fix a definite time there, this prosecuting witness might not be able to get there.

Mr. ANDERSON. As I say, not being a lawyer I am not familiar with what these terms will indicate——

Mr. DEGRAFFENRIED. That is just a suggestion. I consider the way you feel about it, and I feel the same way. I think the defendant is entitled to a speedy and prompt trial.

Mr. LARKIN. That is just our idea, Mr. deGraffenried. To set a standard for a number of cases is very difficult. And in addition to that there are perfectly reasonable exigencies that arise in individual cases which just do not fit under a set time limit.

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Now, to nail that idea of a speedy trial down and to assusre that it is complied with we have added article 98, which I draw your attention to at this time and which makes it an offense to engage in any unnecessary delay.

Mr. BROOKS. Which is that?

Mr. LARKIN. Article 98.

Mr. ANDERSON. Page 73.

Mr. LARKIN. It says:

Any person subject to this Code who (1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this Code shall be punished as the courts martial may direct.

So in addition to providing that there be an immediate processing of the charges, if anybody unnecessarily delays doing it, he himself becomes liable to an offense, you see.

Mr. ANDERSON. I see. And that is new?

Mr. LARKIN. That is new. That is a brand new offense. We put it in with your idea in mind, Mr. Anderson.

Mr. SMART. Mr. Chairman.

Mr. BROOKS. Mr. Smart.

Mr. SMART. I might enlighten Mr. Anderson a little bit further on that. As an ordinary rule all the court-martial cases of which I have any knowledge are such that when the charges and specifications are referred for trial or even back during the pretrial investigation, there is a time sheet which goes along with those charges and specifications.

They set out for each process that is to be accomplished in a reasonable period of time, be it 1 day, 2 days, 3 days, or whatever it is. And for each officer who must complete that process, if he fails to complete it within that period of time he must reply by endorsement or make a statement thereon as to why he failed. He must show the reason for that.

I might further say that the impetus as of today is to try these men as speedily as possible and still be consistent with good procedure and justice.

Now, today, in the Second Army Area and perhaps others, they have a lot of these old wartime desertion cases. The FBI is apprehending these people and placing them in confinement and then it becomes a chase to find the records, which may be in St. Louis, or Cleveland, Ohio, for Navy records, or other places.

In the Second Army Area they have issued a directive that a man will not be held in confinement more than 45 days. If the Government fails to produce those records within that 45-day period he will be released from confinement.

Mr. ANDERSON. Is that confined to the Second Army Area?

Mr. SMART. I think it is being done elsewhere, because these desertion cases are scattered all over the United States. For instance, in the St. Louis area I think there are perhaps about 2,000 wartime desertion cases still within the area of St. Louis.

They are apprehending them as fast as they can and trying them as fast as they can. But this process of getting old records is a long and difficult thing. But I am satisfied that they are using every reasonable effort to bring these people to trial as speedily as they can.

Mr. ANDERSON. Off the record, Mr. Chairman.

(Statement off the record.)

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Mr. LARKIN. I also draw your attention to article 33, which attempts to make a flexible time limit, where we set an 8-day time period is provided, wherein the article requires the commanding officer in general court-martial cases to forward the charges he has received against a man to the next higher echelon.

We put in there "if practicable" to take care of the exigencies which may not make it practicable, but if he does not do it as you see he must report the reasons why he does not.

So I think the combination of 33 and 98 is pretty good assurance that the cases will be speedily processed. And as I said before, there is great desirability in that. But you have to be careful in not going too far and process the cases so speedily that the accused does not have a chance to prepare his defense. I think it is a pretty good balance, the way it is provided.

Mr. BROOKS. Let me ask you this, Mr. Larkin. This uses the phrase there "immediate steps shall be taken to inform him of the specific wrong of which he is accused." Would it improve it to change that by saying "he shall immediately be informed of the specific offense for which he is charged and steps shall immediately be taken to bring him to trial?"

Mr. LARKIN. I think you are weakening it a little bit that way, Mr. Chairman, by leaving out the immediacy of taking steps both to inform and to try or dismiss.

Mr. BROOKS. Why take steps? Why not immediately inform him of the charge and strike out "steps?" Why would it not be better to say "immediately he shall be informed of the charge?"

Mr. LARKIN. Well, the sentence was gramatically constructed so that "informing him and trying him or dismissing him," both modify "immediate steps."

Mr. SMART. I think there is another point, Mr. Chairman, and that is at the time he is placed in confinement there may not be any charges and specifications. The convening authority who will subsequently prefer charges and specifications may not even know the fellow is in confinement yet.

Mr. BROOKS. How, then, do you read the first part of that, that says "any person subject to this code charged with an offense under this code"? Does not that mean that he has been charged?

Mr. SMART. It may be an informal proposition up until then. It never becomes formal on charges and specifications until it gets to the convening authority or a subordinate officer who is authorized to prepare charges and specifications. He may not even know that the man is in confinement.

Mr. BROOKS. Then your interpretation of the word there in the first line of that section "charged" is that it does not really mean formal charges.

Mr. LARKIN. That is right.

Mr. BROOKS. It means suspected——

Mr. SMART. That is what I would say.

Mr. BROOKS. Of an offense rather than charged with an offense.

Mr. LARKIN. Well, the information is laid before some officer who within a day or two must draw the formal charge.

Mr. RIVERS. He then begins his pretrial investigation?

Mr. LARKIN. Thereafter the pretrial investigation begins, if it appears to be a general court-martial case.

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Mr. SMART. He may be charged. Of course, if he committed an offense which someone had seen and reported and the fellow is a fugitive temporarily, the charges and specifications may be prepared. But on the other hand they may not be prepared.

Mr. BROOKS. This article relates to the second step, that is not the arrest initially but the arrest and confinement

Mr. LARKIN. That is right.

Mr. BROOKS. Following through the thought, there has been a screening out process already.

Mr. LARKIN. That is right.

Mr. BROOKS. That is he has been arrested, they screened him out and now they put him over for arrest and confinement.

Mr. LARKIN. That is right.

Mr. BROOKS. So it is not the initial arrest at all.

Mr. LARKIN. It is not the initial apprehension.

Mr. BROOKS. It is not the initial apprehension.

Mr. LARKIN. But thereafter as soon as he is——

Mr. BROOKS. It is a screening-out process which says that there is enough against you to charge you with some offense.

Mr. LARKIN. That is right, and hold you until they quickly process the charge and formalize it in charges and specifications.

Mr. RIVERS. Under this bill here, Mr. Larkin, when the original charges have been instituted, before the pretrial investigation, at what point can those charges be dismissed or thrown out as being with no foundation, under your bill?

Mr. LARKIN. Well, they can be thrown out after the pretrial investigation. If the investigating officer decides that there is not sufficient evidence to indicate a crime or that this man did it, he does not dismiss the charges but he can recommend to the staff legal officer and the convening officer and they can be thrown out at that point.

Mr. RIVERS. Now, if we have a separate JAG set-up, like we did in the Elston bill, after the command institutes the proceedings or institutes the arrest and before the investigation begins, when does his responsibility end or when does his jurisdiction end as far as the chain of command is concerned? The minute it is put formally in the hands of the JAG's Office?

Mr. LARKIN. Well, it just does not work quite that way, I do not believe. He is apprehended and if the charges appear sufficient to warrant holding him while they are further processed, he is confined.

Mr. RIVERS. Eight days under your——

Mr. LARKIN. The formal charges are drawn and within 8 days they must be, if it is a general court-martial case, transferred to the general court-martial authority.

Mr. RIVERS. That is the JAG's Office?

Mr. LARKIN. No. That is the commanding officer, who has this convening authority.

Mr. RIVERS. Assume, now, we have an independent JAG's Office.

Mr. LARKIN. All right, if we have an independent JAG the staff judge advocate of the commanding officer may or may not be a JAG officer.

Mr. RIVERS. That is right.

Mr. LARKIN. There is no requirement, even in the Elston bill, that he specifically be a corps officer.

Mr. RIVERS. Yes.

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Mr. LARKIN. He probably will be. The Judge Advocate General is to select the people who are to be staff judge advocates under that act.

Mr. RIVERS. That is right. And he also——

Mr. LARKIN. But he may not necessarily select a corps officer. He may not have enough of them. But in any event, whether he is a corps officer or not, that staff judge advocate does get the results of the pretrial investigation and consults with the commanding officer.

Mr. RIVERS. Or his representative, who might be a law officer, representing the commanding officer?

Mr. LARKIN. Well, that is the staff judge advocate.

Mr. RIVERS. He will have a legal officer who goes to the JAG and says, "Now listen, this boy has done this, that, and the other, we want you to investigate it. We investigated this. Here are our papers." Now that legal officer representing the JAG can throw it out?

Mr. LARKIN. No.

Mr. RIVERS. As having no basis. He says, "I am just not going to prosecute him."

Mr. LARKIN. No, sir; he cannot throw it out. The commanding officer can throw it out.

Colonel DINSMORE. May I say something?

Mr. LARKIN. Yes, go ahead.

Colonel DINSMORE. Mr. Rivers, the charges or the intended charges may be dropped at any time by any officer who has power to act. For example, the man who ordered the confinement may change his mind and say "I do not think there is enough" and drop him right there and you never have an investigation.

Mr. RIVERS. That is right.

Colonel DINSMORE. The man's organization commander may drop the charges.

Mr. RIVERS. I know that.

Colonel DINSMORE. And that same processing all the way up. I remember one time I went to the guardhouse for some other reason and found a corporal in confinement. I had him out and the charges dismissed inside of an hour, and there had never been any investigation.

Mr. RIVERS. Well, now, my point is this: I can appreciate the original officer making the charge can withdraw his charges. But now say the JAG's Office or the office independent of the command says "I have investigated this thing from the legal standpoint, you cannot maintain charges before the general court-martial and we just are not going to prosecute him."

Now where does it stand?

Colonel DINSMORE. If you write that into the bill, why that would be so. But that is not true under the Elston bill.

Mr. RIVERS. That is not true under the Elston bill.

Colonel DINSMORE. Yes, sir.

Mr. RIVERS. Say we made that so it would have to be approved—by how high up on the JAG list?

Mr. LARKIN. It depends on what you write in.

Mr. RIVERS. Because there are some cases where a JAG officer knowing the law—and certainly under the bill we propose to make him sufficiently conversant with the bill on the basis of his prerequisite training——

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Mr. SMART. Mr. Rivers, may I add right there, let us assume that he staff judge advocate to the convening authority advised the convening authority that there was no case made out as the result of pretrial investigation.

Mr. RIVERS. That is right.

Mr. SMART. And that the convening authority went ahead and convened the court in spite of that fact. It is my interpretation of his bill that after the case has been tried and the case then comes back to the office of the convening authority first the staff judge advocate must conduct a legal review of it.

He has a second whack. And I say at hat point, if he holds the record insufficient I do not think the commanding officer can sustain he case. I think there he is locked. If not the first time, he is the second time.

Mr. RIVERS. Now there is where we ought to anticipate that trouble right off the bat, because you are bound to run into it.

Mr. SMART. That is true.

Mr. LARKIN. That is in article 34. The whole subject is treated here.

Mr. BROOKS. Is there any further discussion on article 10?

Mr. ANDERSON. Just one more thing, Mr. Chairman.

Mr. BROOKS. Yes.

Mr. ANDERSON. Is it the policy of the Navy Department that a man's service record has to be complete before he can be brought to trial?

Captain WOODS. In general court-martial cases they send for the service record from Bureau of Personnel and it has to be before the court before they can award sentence.

Mr. ANDERSON. I might point up my question by reading, if I may, Mr. Chairman, a paragraph here from a letter addressed to me on this subject of military justice by a lawyer friend of mine in California who served on Admiral Halsey's legal staff during the war and had an opportunity to see many of the things that you are seeking to correct in this code.

He says—

> From an administrative angle the Navy seems to have the idea that they cannot try a man for an offense until they have his service record complete. I have seen cases where men were arrested for being a. w. o. l. or being deserters where they have been confined to brigs for periods of time up to 90 days while the authorities were trying to get their service records complete. I have seen men whose service records have been lost in action by a ship going down, held in brigs for 6 and 8 weeks awaiting a trial on petty offenses until their service records could be completed.

That is the reason that I asked that question. Is that correct?

Captain WOODS. I think that is correct, Mr. Anderson; yes.

Mr. ANDERSON. In other words, then, even with the code written as it is, there is a chance that a man's trial might be delayed for months.

Mr. SMART. On the other hand, Mr. Anderson, one of the particular reasons to have that service record is to find out that the accused is actually in the service. Strange as it may seem, as of today you have alleged deserters coming on Army posts—I do not know about the Navy—saying "I am a deserter from such and such an outfit" and they are finding out that some are not deserters at all.

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They never deserted from any service. Now until you get that man's service record which tells you the chronological history of his service you are not positive that he is a deserter.

Mr. DEGRAFFENRIED. There are a great many people that have come in and confessed to offenses where it was later ascertained that they were not guilty.

Mr. ANDERSON. They just wanted to get a night's sleep and a bowl of beans.

Mr. SMART. Mr. Chairman, as to that word "wrong" in line 17, have you any feeling that that should be changed to "offense"?

Mr. LARKIN. Colonel Oliver, I recall, made that recommendation. We considered it when we were drafting this article and used "wrong" rather than "offense" for this reason, that we retain a general article as there is a general article in the Articles of War and Articles for the Government of the Navy now: article of war 96. To accuse a man of violating article 96 does not necessarily tell him very much because it is an article which makes conduct to the prejudice of good order and discipline and things of that character an offense.

Mr. BROOKS. It is a catch-all, is it not?

Mr. LARKIN. That is right.

So while the other punitive articles set out specific offenses of robbery, burglary, and so forth, that one does not. Of course, when the man is served with formal charges and specifications he is told what act he is alleged to have committed. But to be able to inform him immediately, why we used the word "wrong" rather than "offense," having the general article in mind.

Mr. BROOKS. Of course, if he has not been formally charged, the word "wrong" might be properly used. If he is specifically charged—and we have discussed the article and held that this does not require a specific charge at this point—then the word need not necessarily be "offense."

Mr. LARKIN. That is right.

Mr. BROOKS. It seems to me.

Mr. SMART. I think it is O. K. the way it is.

Mr. ELSTON. What is the matter with the word "act"—"of the specific act of which he is accused"?

Mr. SMART. It would be the same thing, Mr. Elston, if he were charged under the general article.

Mr. LARKIN. That is right.

Mr. SMART. Because all you can tell him is a shotgun statement that he is charged with conduct to the prejudice of good order. That certainly is not telling him much, until you investigate it further and find out the specific offense.

Mr. RIVERS. It could be a general or a summary.

Mr. LARKIN. That is right.

Mr. BROOKS. Any further suggestions or references to article 10? If not, we will proceed to article 11.

Mr. SMART (reading):

ART. 11. Reports and receiving of prisoners.

(a) No provost marshal, commander of a guard, or master at arms shall refuse to receive or keep any prisoner committed to his charge by an officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

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(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within 24 hours after such commitment or as soon as he is relieved from guard, report to the commanding officer the name of such prisoner, the offense charged against him, and the name of such person who ordered or authorized the commitment.

References: A. W. 71, 72.

Commentary: This article is derived from A. W. 71 and 72. See articles 95–97 dealing with restraint.

Mr. SMART. I might add, as you go into this article, Mr. Chairman, on page 12, in line 3, some question has been raised regarding the word report to "the" commanding officer rather than report to his commanding officer. Just what is meant by "the," is the only question I have as to the article.

Mr. ELSTON. I am wondering why there is any necessity for this article at all. Is it not all a matter of regulation? Are not all these things self-evident? Would not all of these requirements necessarily follow, even though we did not have it written into the law?

Mr. LARKIN. I should say so, Mr. Elston. They have been in the law for many years, however, and they are desirable, I believe. To take them out might raise the inference that they are no longer necessary.

As you see, they are a consolidation of present articles of war 71 and 72 and of course they do relate indirectly to the punitive articles 95, 96, and 97, all of which makes it an offense to incarcerate a person unlawfully or to release him without authority. They are a reiteration of the present law.

If they had not been in the present law and were not regulations, I should say they should not stay there. By virtue of having been in the law and to avoid any question by taking them out, we have continued them.

Mr. BROOKS. Now in reference to that suggestion regarding the commanding officer, I could see where a man might be arrested by a post other than his own. The word "the" there would be inappropriate, perhaps.

Mr. LARKIN. I think that is the point.

Mr. BROOKS. And this would require some notice to his commanding officer to be made, would it not, since it requires that the name of the person ordered to be arrested be turned over to the commanding officer?

Mr. LARKIN. Well, the reason for this is to insure that a commanding officer—and incidentally it may well be his and frequently is, but whoever the commanding officer is—be notified as to who is being confined so that he can start the necessary processing of the whole case.

Mr. BROOKS. Any further suggestions?

Mr. RIVERS. Well, experience has proven that you need these things. That is why they should be here, because they have come up. Experience has proven that you need those various articles that appear to be not so necessary at the time. Then too the reason they are related here is because this is a brand new code to supplant everything that has gone before.

Mr. LARKIN. That is right, Mr. Rivers. And as I say we wanted to avoid the idea that if we dropped it, it was no longer necessary. Otherwise, I think Mr. Elston's comment is perfectly appropriate.

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Mr. RIVERS. That is right. But the experience has shown it is needed.

Mr. LARKIN. That is right.

Mr. RIVERS. Being things that might not have suggested themselves on the face of it.

Mr. LARKIN. That is right.

Mr. BROOKS. If there is no further comment, we will approve the article, article 11, and pass on to article 12.

Mr. SMART (reading):

ART. 12. Confinement with enemy prisoners prohibited.

No member of the armed forces of the United States shall be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States.

References: A. W. 16.

Commentary: A. W. 16 could be interpreted to prohibit the confinement of members of the armed forces in a brig or building which contains prisoners of war. Such construction would prohibit putting naval personnel in the brig of a ship if the brig contained prisoners from an enemy vessel. This article is intended to permit confinement in the same guardhouse or brig, but would require segregation.

Mr. SMART. I might say to the committee that this was a floor amendment to H. R. 2575 when it was brought before the House. I think Mr. Burleson of Texas offered this amendment, to be sure that American boys were not confined with prisoners of war or other enemy nationals.

Mr. RIVERS. Like happened during the war.

Mr. BROOKS. The suggestion was made that there should be some stipulation regarding separation of sexes.

Mr. LARKIN. This article, as Mr. Smart points out, was a floor amendment, and it read a little differently as passed by the Congress last year. As it is in the Public Law 759, it says—

No person subject to military law shall be confined with enemy prisoners or any other foreign nationals outside of the continental limits of the United States.

Now we have changed the wording and said—

No member shall be placed in confinement in immediate association—

because as it read it conceivably could cause a number of confinement difficulties.

I do not think it was thought through completely when the floor amendment was offered. It was limited in the floor amendment to confinement overseas. The service might have a difficult time overseas if they could not confine a person with enemy prisoners in that they could not even keep them in the same jail.

There may not be more than one jail or place of confinement within the area. Then they just could not restrain them or confine them at all.

We thought we kept the sense of the present law but made it a little more flexible by saying "in immediate association" which in effect would mean you could keep them in the same jail by at least segregating them in different cells. It further was proposed for the Army, with no thought of the Navy—the Navy you can visualize might have a great difficulty aboard ship when they captured an enemy vessel and took foreign nationals.

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Then they could not keep any offender of their own in the same brig on ship board. We have changed that. And we have deleted, if you will notice, "outside the continental limits" and made it apply everyplace, but prohibit incarceration in close association but not with because "with" has the connotation that you could not keep them in the same prison and there may be only one. They are the only differences between what is in the law now and this article.

Mr. ANDERSON. Mr. Chairman, is there any place in the code that expresses prohibition against confining our men in foreign jails?

Mr. LARKIN. No; but this one prevents them being confined with enemy prisoners of war or foreign nationals not members in the same cell. That is the only provision in that connection.

Mr. ANDERSON. But Professor Morgan in his very fine letter to me—oh, he refers to article 58: Place of confinement, wherein he says—

Article 58 of the code provides for confining convicted military persons in places of confinement under the control of the United States.

Mr. LARKIN. Yes; that is a different provision. That is in Federal prisons.

Mr. SMART. Within this country, Mr. Anderson.

Mr. ANDERSON. Within this country.

Mr. SMART. That is what they are talking about.

Mr. ANDERSON. I mean, under this code, could a commanding officer have an enlisted man in the United States Navy or Army confined in a foreign jail?

Mr. LARKIN. Yes; he could, for a short time or whatever time it is necessary. But if they are so confined they may not be in immediate association with any——

Mr. ANDERSON. Yes. But I am thinking that even jails in some of these foreign countries are pretty lousy—and I mean lousy—and I am wondering if at the whim of some commanding officer a man may be confined in one of those places, we might say Persia or China or some such country as that, which would be a pretty unhealthy experience for the man.

Mr. LARKIN. Well, the unfortunate alternate is that we may have no jails there and there probably is no other way to confine him temporarily.

Mr. ANDERSON. Well, I would not interrupt the proceeding here, Mr. Chairman. I think perhaps we will want to look into that a little more carefully when we reach 58, which is a long way in the future.

Mr. BROOKS. Well, is there any further discussion on article 12? You do not think there is any need of specifying there be a separation of men and women, do you?

Mr. LARKIN. I do not think so.

Mr. SMART. I do not think so. That will automatically take care of itself.

Mr. BROOKS. It would seem that way to me.

Mr. ELSTON. You do not have that in statutes here.

Mr. LARKIN. That is administrative.

Mr. ELSTON. You do not have any statute on it. It is left up to the authorities.

Mr. BROOKS. It would be unthinkable to have it otherwise.

Mr. ELSTON. The assumption is they would not do it.

Mr. LARKIN. That is right.

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Mr. ELSTON. Any officer who would not do it would certainly be subject to court martial, by virtue of that very act itself.

Mr. LARKIN. I should say so.

Mr. ELSTON. I do not think we need to write it into the law.

Mr. BROOKS. Unless in instances where you had families arrested, or something like that.

Well article 13, Mr. Smart, will you read.

Mr. SMART (reading):

ART. 13. Punishment prohibited before trial.

Subject to the provisions of article 57, no person, while being held for trial or the results of trial, shall be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to punishment during such period for minor infractions of discipline.

References: A. W. 16; MCM, paragraph 19; Naval Justice, page 78.

Commentary: This article is derived from A. W. 16. The reference to article 57 clarifies the relation of this article to the effective date of sentences. A. W. 16 has been interpreted to prohibit the enforcement of any sentence until after final approval even though the accused is in confinement after the sentence is adjudged. It is felt that a person who has been sentenced by a court martial and is in confinement which counts against the sentence should not draw full pay for the period between the date of sentence and the date of final approval.

The provision as to the rigor of restraint is derived from present Army and Navy practice. The article also makes clear that a person being held for trial may be punished for offenses not warranting trial by court martial.

I might advise the committee that that likewise was a floor amendment during the consideration of 2575 and it was raised for the reason that apparently people who were confined pending trial were being subjected to rock breaking and everything else, the same as people who had already been convicted of offenses and happened to be incarcerated in the same place of confinement.

That is the reason for it. And this is merely a carry over from 2575.

Mr. GAVIN. Read that through again, and read it slower, will you.

Mr. SMART (reading):

Subject to the provisions of article 57, no person, while being held for trial or the results of trial, shall be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to punishment during such period for minor infractions of discipline.

Mr. BROOKS. Is there any discussion on article 13?

Mr. RIVERS. Well the case you have in mind is if you have a boy incarcerated for an alleged offense, unless he is just insubordinate in the jail there, there is the only time you can impose any disciplinary action?

Mr. SMART. Exactly right.

Mr. RIVERS. And in no case can you impose possible rock breaking on him.

Mr. SMART. That is right.

Mr. RIVERS. That is the case you have in mind.

Mr. GAVIN. Yes.

Mr. SMART. That is the intent of this article.

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Mr. GAVIN. In no case can rock breaking be imposed upon him, unless convicted.

Mr. SMART. Correct.

Mr. GAVIN. And sentenced for it.

Mr. SMART. Correct.

Mr. RIVERS. Sentenced for it as a result of conviction, I should say.

Mr. LARKIN. Hard labor, that is right.

Mr. BROOKS. Article 14, then.

Mr. SMART (reading):

ART. 14. Delivery of offenders to civil authorities.

(a) Under such regulations as the Secretary of the Department may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, such delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon request, be returned to military custody for the completion of the said court-martial sentence.

References: A. W. 74; N. C. and B., application C.

References: A. W. 74; N. C. and B., appendix C.

Commentary: Subdivision (a) is an adoption of present Navy practice. The present Army practice was adopted at a time when the Army did not have authority to try its personnel for civil offenses in time of peace so that if a man were not delivered up he would not be tried at all. Since the armed forces now have such authority, the mandatory feature of A. W. 74 is felt to be unnecessary. Under the Navy practice, which has worked very satisfactorily, the Secretary of the Navy has given broad authority to commanding officers to effect deliveries of enlisted personnel without reference to the Navy Department. (See Alnav 145 of June 26, 1947.)

Subdivision (b) adopts present Army practice.

Attention is invited to the provisions in appendix C, Naval Courts and Boards which deal with the procedure for delivering offenders, and related matters. It is contemplated that these matters will be covered by uniform regulations for the armed forces.

Mr. RIVERS. It is just like a State jurisdiction. When the Federal Government finishes with him, you send him back to finish his State sentence. That is the same principle.

Mr. SMART. That is right.

Mr. BROOKS. It is the Article on Comity.

Mr. ELSTON. Why do they use the word "offender after having answered to the civil authorities"? Does that not mean after having completed his sentence in the civil courts? He answers to it when he appears.

Mr. SMART. He may have been acquitted.

Mr. ELSTON. Well——

Mr. RIVERS. Just say "released."

Mr. ELSTON. Probably say "after the case has been disposed of by the civil court." But when you say "after having answered to the civil authorities * * * shall, upon request be returned to the military custody," suppose he went in and pleaded not guilty to the indictment in the civil courts. He answered to that charge.

Then he might request return to the military authorities. I think the meaning is after the case has been disposed of by the civil courts.

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Mr. LARKIN. I think it has been so construed, Mr. Elston. That is the language of the present statute.

Mr. ELSTON. Of course, present statutes may not be perfect.

Mr. LARKIN. Oh, I quite agree.

Mr. RIVERS. Why do we not write that in there. It will not hurt. This is a new code.

Mr. BROOKS. What is that you have in mind?

Mr. RIVERS. What is yours, Mr. Elston?

Mr. BROOKS. Change the word "answer" to "disposed of"?

Mr. ELSTON. That is right.

Mr. RIVERS. That is right.

Mr. SMART. Well, it will take more changes than that, Mr. Brooks.

Mr. ELSTON. Yes.

Mr. DEGRAFFENRIED. I believe if you get the proper construction of that word "answer" there in words and phrases——

Mr. ELSTON. Then I am wondering why he has to request return to the military custody. Should he not be returned without request?

Mr. SMART. I might add there, Mr. Elston, if I remember correctly, those words were inserted at my request during the deliberations of this group. And for this reason——

Mr. ELSTON. You must have had a good reason, then.

Mr. SMART. I think I did. Supposing you have a man serving a sentence by a special court of 3 months and then it is determined that he committed a murder. Well, he has completed 1 month of his sentence, so the military releases this man who is charged with murder by the civil authorities. He is tried and convicted and maybe given 30 years by the civil authority.

Certainly it is beyond any stretch of my imagination that the military should ever want that man back. By the time he has completed his 30 years he certainly is going to have been dropped from Army or Navy rolls and they do not want him. So I thought it would be better to put in there "at the request of the military."

Now he may be serving a year's sentence and may get into the civil courts and after having served only 1 or 2 months of his military sentence he is acquitted by the civil authorities. That should not then erase the rest of his confinement by the military.

So it leaves up to the military, depending upon the outcome of the civil action, as to whether or not they will request him to come back and complete the service of his sentence.

Mr. ELSTON. Suppose you had a case like this, where a fellow is confined we will say for a year. Then he is charged with a very serious offense like rape or murder and he is turned over to the civil authorities and in a very short time he is acquitted of the charge.

Mr. SMART. All right.

Mr. ELSTON. Should not he be returned to finish his sentence?

Mr. SMART. By all means he should be. And that is exactly the reason why those particular words are in there so far as I am concerned, because it leaves it with the military. They can place a hold order with the civil authorities for the return of that man.

Mr. ELSTON. It looks, the way I read this, he could only be returned if he requested it.

Mr. SMART. If the military requested.

Mr. DEGRAFFENRIED. Not he requested, but the military.

Mr. SMART. If the military authorities requested it, he can be returned.

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Mr. ELSTON. Do you not think we better add the words, then, "upon the request of the military authorities"?

Mr. LARKIN. Well, you could clear that up, I think, Mr. Elston, by saying "shall be returned to military custody upon their request for the completion." Change "request."

Mr. ELSTON. That carries out Mr. Smart's idea.

Mr. LARKIN. That is right.

Mr. ELSTON. And would not result in any misunderstanding.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. Mr. Larkin, in regard to that word "answer" there, do you think the construction which has been placed on that word would be that he had not answered to the civil authorities until he had been tried, convicted, sentenced and he had completed his sentence, and then he would have answered to it?

Mr. LARKIN. I think so.

Mr. DEGRAFFENRIED. That is the way you think that word has been construed?

Mr. LARKIN. I think that is the way it has been construed.

Mr. DEGRAFFENRIED. And you think the simplest way to get all of that in there, rather than to try to set it all out, would be to use this particular word which has been construed in that manner?

Mr. LARKIN. Well, I think that is the simplest way. However, I have no objection to spelling it out a little more clearly. But when we went over it, why we saw that it had that construction and just left it. But there is no pride of authorship, and because it has been on the books is no reason to keep it, certainly.

We were quite ambitious in changing lots of language, as you have noticed. I think we paid attention to tradition. We did not feel that everything that had gone in the past was wrong.

On the other hand we were free in dropping and deleting what we felt was obsolete and old-fashioned language. Now that actually is somewhat old-fashioned, I think. It is a derived meaning. It has been so construed. But I am perfectly happy to leave this to the committee.

Mr. BROOKS. I do not think your suggestion regarding the insertion of the word "their," "upon their request," would cover that case.

Mr. SMART. I want to suggest some wording there, Mr. Brooks, if I may.

Mr. BROOKS. All right.

Mr. SMART. I would say in line 5 "upon the request of competent military authority."

Mr. RIVERS. That is all right.

Mr. SMART. "Shall upon the request of competent military authority be returned to military custody."

Mr. ELSTON. That is fine.

Mr. BROOKS. You heard the suggestion, gentlemen. Is there any objection to it? If not, it stands adopted.

Now I wanted to bring up the question of subsection (a) there, which covers the case of a member of the armed forces accused of an offense against civil authority. That person may be delivered upon request to civil authorities for trial. Now should that go further and make delivery for trial and disposition of the case?

Mr. RIVERS. I do not think that is necessary.

Mr. BROOKS. You think for trial——

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Mr. RIVERS. It presupposes disposition, I think.

Mr. BROOKS. Not necessarily.

Mr. RIVERS. You do not think so?

Mr. BROOKS. What do you think, Mr. Larkin? Do you think it should go any further?

Mr. LARKIN. I really do not think it is necessary. I think it just means that, myself.

Mr. RIVERS. Once he is delivered to the jurisdiction of the civil authorities.

Mr. LARKIN. It is up to them to follow through with their processes, which include indictment, trial and punishment.

Mr. BROOKS. You do not think the military authorities should request the return of the man?

Mr. LARKIN. Well, in connection with (a)?

Mr. BROOKS. Yes.

Mr. LARKIN. I think that is covered in (b). Do you not think so?

Mr. BROOKS. No, I do not because (b) covers the case of a person undergoing sentence of a court martial.

Mr. LARKIN. Well, (a) I should say covers the case of a man undergoing sentence or otherwise, a member of the armed forces, no matter what his status is.

Mr. BROOKS. Yes, but it would not cover the case of a man who merely is arrested and has not been sentenced.

Mr. LARKIN. Well, (a) as I see it is the general provision for comity with the civil authorities as to all members of the armed forces, whether or not they happen to be under court-martial sentence, whereas (b) provides for the case where a man is already serving a sentence and is requested by the civil authorities and is turned over to them.

You have the further question there of what is the military going to do in relation to that man's serving the unexpired part of the sentence in the military. (b) spells out that circumstance. Whereas (a) is the general provision for comity, no matter what his status is.

I think actually they are complete in and of themselves or as written they cover all those circumstances.

Mr. BROOKS. What do you think of it, Mr. Smart?

Mr. SMART. All he is is a member of the armed forces and you do not designate in what capacity he is serving.

Mr. LARKIN. That is right.

Mr. SMART. Whether it is a person on active duty, whether it is a person who is awaiting trial on charges, or whether it is a person languishing in the gaurdhouse after having been convicted. I think the provision is appropriate.

Mr. LARKIN. Yes.

Mr. BROOKS. It is generic, yes.

Mr. SMART. That is right. I think the provision ought not to be altered.

Mr. BROOKS. The question which arises in my mind, however: If it is necessary to write into this subsection (b) that the offender be returned to the military custody, why is it not necessary in subsection (a)?

Mr. LARKIN. Well, I think in subsection (a) if a member of the armed forces is turned over to the civilian jurisdiction and is acquitted, for instance, why the man has an obligation to come back, whereas

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in (b) if he has been convicted by the civilians and he is serving a 10-year sentence in the civilian jail, for instance, then the question is 10 years later, do you want him to come back and serve out the balance of a short military sentence?

For that reason we would leave it up to the military to determine whether they want him. In most instances they would not want him after that period.

Mr. SMART. I think the distinction, Mr. Chairman, is that subsection (a) merely provides the authority to relinquish a person to the civil authorities; (b) provides the authority for his return to military custody.

Mr. LARKIN. And if he happens to be the kind of a person who is serving a military sentence when the request is made.

Mr. DEGRAFFENRIED. Mr. Larkin, as to the word "may" there, is it your construction that that leaves it entirely to the discretion of the military authorities as to whether or not they will deliver a man to the civil authorities?

Mr. LARKIN. That is right, Mr. deGraffenried.

Mr. DEGRAFFENRIED. Under this bill do the civil authorities have any way, where a man is indicted for what we term in civil law a "felony," to force the military authorities to turn a man over to them for trial under this bill?

Mr. LARKIN. I would say no under this.

Mr. RIVERS. That is the way it obtains today.

Mr. LARKIN. There are two practices today. This is the way it obtains in the Navy. The Army is required to turn over their personnel at the request of civilian courts, which is the outgrowth of an old law the history of which is that the Army did not have complete jurisdiction to try members of the Army for all cases.

Under those circumstances the man if he was not tried by the civilian would not have been tried at all. So Congress provided that the commander must turn him over. But now of course the Army as well as the Navy have far more complete jurisdiction over a larger number of offenses and as such the man just does not escape.

The Navy has just this provision and have used it for a considerable time and it has apparently worked to the entire satisfaction of the civilian authorities.

Mr. RIVERS. Does that go back——

Mr. DEGRAFFENRIED. Now, Mr. Larkin, let me ask you about a case like this. Can you conceive of a provision like this. A soldier had been indicted by the United States or Federal grand jury in the State of Louisiana for bringing a stolen automobile from Alabama to Louisiana. He was convicted in the United States district court and sent to the penitentiary for 3 years. After he got out he reenlisted in the Army.

He came to Tuscaloosa, stole a truck, and was indicted by the grand jury for stealing a truck. His commanding officer notified me, as prosecuting attorney I had that circuit, not only of the present charge that was pending against him in Tuscaloosa County by the grand jury but also the fact that he had just completed, before he enlisted in the Army, serving a 3-year sentence in the Federal penitentiary in Louisiana for carrying a stolen automobile across the line.

And then this commanding officer wrote me to send him a summary of the evidence before the grand jury. I sent him this evidence,

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which showed completely and without any doubt that he committed this crime.

He was never released and never sent back for trial to the civil authorities and so far as I know he is still in the Army. Now, can you conceive of a situation like that?

Mr. LARKIN. Well, if you say it happened, why I do not doubt it at all, but I would not have expected it to have happened. I should think the Army would have been delighted to turn him over to the civilian authorities and get rid of him.

Mr. DEGRAFFENRIED. That is why I asked you about the construction of this word "may"?

Mr. LARKIN. Well, it should be construed and was intended to be contrued as discretionary, which is specifically the answer. In practice I would be more than amazed if the Army did not turn over that type of man. I should think they would be delighted to get rid of him.

Mr. BROOKS. The Army has not any authority to come and take a man away from the civil authorities if they have him under arrest.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. But a man has a right to make bond in a civil case.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. And when he made bond, he was released and he went back and reported to his command. Then when the case came up for trial, he was not there and the bond was forfeited.

Mr. BROOKS. If the Army does not release a man, it is questionable whether or not the bond should be forfeited.

Mr. LARKIN. That is in the discretion——

Mr. DEGRAFFENRIED. When he makes a bond in a civil case and those people sign his bond they guarantee to have him there, and there is no stipulation written in that bond about his being in the Army or anything.

Mr. LARKIN. I think that is customary.

Mr. SMART. I may add the converse of your experience, Mr. deGraffenried, that I had. And I think it is one of the thoughts back of this situation here. As you know, around all of these Army posts you will always have alleged charges of rape from the girls downtown. I investigated such a case at Louisville, Ky., wherein one of our sergeants was charged. I got downtown and found out that the woman was a rather unsavory character and a couple of her men friends were pushing that charge.

If they had ever taken that charge into civil courts down there, while she did not want him stuck, those two men who were hanging on the outskirts, and perhaps making a little money, would have seen to it that that boy got stuck. So the blade has two edges to it.

Mr. DEGRAFFENRIED. Yes; I am sure of that.

Mr. RIVERS. Well, does not, too, that go back to the old days of whether or not there is inherent jurisdiction vested, for even offenses on reservations?

Mr. BROOKS. Well, if there are no suggestions of amendment we will approve that article as written and move on——

Mr. ELSTON. Mr. Chairman, I understand that they will draft some language with respect to those words that we discussed before "having answered," so that it will mean after the case has been finally disposed of.

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Mr. ANDERSON. I thought that language had already been read.

Mr. BROOKS. You mean "upon request"?

Mr. ELSTON. No. I mean in (b), where we questioned the words "and the offender after having answered to the civil authorities." The point I was making was after the case has been finally disposed of.

Mr. LARKIN. Yes.

Mr. BROOKS. What is the pleasure of the committee?

Mr. ANDERSON. Proceed.

Mr. SMART. I may state before I start, in that article 15 is a compromise article regarding the old 104 article of war, which we knew as company punishment. It is nonjudicial in nature. It is supposed to be administered for purely minor disciplinary offense within the unit. [Reading:]

ART. 15. Commanding officer's nonjudicial punishment.

(a) Under such regulations as the President may prescribe any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court martial—

(1) upon officers and warrant officers of his command:

(A) withholding of privileges for a period not to exceed two consecutive weeks; or

(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) if imposed by an officer exercising general court-martial jurisdiction, forfeiture of one-half of his pay per month for a period not exceeding three months.

Mr. GAVIN. On that subsection——

Mr. SMART. Yes, sir.

Mr. BROOKS. Let us finish the whole thing, Mr. Gavin, if it is all right with you, and then we will go back.

Mr. SMART. Let me point out so far, the punishments pertain to officers and warrant officers only. Now these follow, No. 2, for enlisted personnel.

(2) upon other military personnel of his command:

(A) withholding of privileges for a period not to exceed two consecutive weeks; or

(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) extra duties for a period not to exceed two consecutive weeks, and not to exceed 2 hours per day, holidays included; or

(D) reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command; or

(E) confinement for a period not to exceed seven consecutive days; or

(F) confinement on bread and water or diminished rations for a period not to exceed five consecutive days; or

(G) if imposed by an officer exercising special court-martial jurisdiction, forfeiture of one-half of his pay for a period not exceeding 1 month.

(b) The Secretary of a Department may, by regulation, place limitations on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers authorized to exercise such powers, and the applicability of this article to an accused who demands trial by court-martial.

(c) An officer in charge may, for minor offenses, impose on enlisted persons assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the Secretary of the Department may by regulation specifically prescribe.

(d) A person punished under authority of this Article who deems his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded

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and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority shall have power to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges, and property affected.

(e) The imposition and enforcement of disciplinary punishment under authority of this Article for any act or omission shall not be a bar to trial by court martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this Article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

References: A. W. 104; A. G. N. articles 24, 25; proposed A. G. N., article 14.

Commentary: This article is a combination and revision of A. W. 104 and proposed A. G. N., article 14. The punishments authorized by these two provisions are combined in subdivision (a), while subdivision (b) empowers the Secretary of the Department to place limitations on their imposition. This recognizes the fact that the authority to administer all the punishments specified may be necessary in one armed force and needlessly broad in another. The problem can be illustrated by reference to one punishment, namely, restriction to specified limits. This punishment would be an effective sanction at a camp or post, but would carry little weight on a ship at sea.

Subdivision (b) also empowers the Secretary of the Department to permit members of the armed force to elect trial by court martial in place of proceedings under this article. This recognizes a difference in present practice among the armed forces. The Navy allows no election on the theory that the commanding officer's punishment relates entirely to discipline, not crime; furthermore, in the Navy the officer who has summary court-martial jurisdiction is the same officer who imposes punishment under this article. In the Army, on the other hand, a company commander with power under this article ordinarily will not have summary court-martial jurisdiction.

Subdivision (c) permits the Secretary of a Department to authorize officers in charge to impose certain punishments under this article. The status and authority of officers in charge differs according to the command of which they are in charge.

Subdivision (d) incorporates and strengthens the provisions of A. W. 104 as to appeal and review. Appeals are to be promptly forwarded and decided. In addition reviewing authorities are permitted not only to remit the unexecuted portion of the punishment, but also to restore all rights adversely affected by the punishment previously executed.

This subdivision is new to the Navy and Coast Guard.

Subdivision (e) is derived from A. W. 104. Under present Navy practice, punishment by a commanding officer is never a bar to trial by court martial although evidence of such punishment may be introduced in mitigation.

Mr. BROOKS. Now any discussion on that, gentlemen?

Mr. ELSTON. Mr. Chairman, might we before proceeding to discuss the individual parts of this article have Mr. Smart and Mr. Larkin indicate to us what if any changes have been made in existing law or over the act that we passed last year.

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Mr. LARKIN. This article is a combination of the practices in the Army and Navy at the present time on this subject of nonjudicial punishment—not courts martial but the company-officer punishment.

The Army and the Navy under their present laws have authority to impose different punishments. Generally speaking the Army's are less severe than the Navy's.

The first question that we encountered was what is the ideal punishment or punishments that should be provided on a uniform basis.

The second question we encountered was whether all of the punishments provided be imposed or whether there should be just a number or whether the punishments should be limited to one or two.

The third problem we encountered was that in the Army and Air Force any person who was brought before company punishment had the right to refuse it, whereas in the Navy in company punishment which is called mast punishment there was no right to refuse the punishment.

The first thing that we did as you will observe under (a) was to limit the number of punishments, that is the numbers that can be imposed on any one man. Admonition or reprimand has been a punishment in both services.

We provided that reprimand might be imposed and if it is, not more than one other of these listed punishments could be imposed—not more than one other.

Mr. RIVERS. Not more than one?

Mr. LARKIN. That is right.

In trying to analyze why there was a difference between Army and Navy punishments we observed that this commanding officer's nonjudicial punishment differed because of the differences in operations between the Army and Navy, notably the operations of the Navy at sea. The Army had no confinement. They had no bread-and-water provision. They had no reduction to the next inferior grade.

Mr. NORBLAD. There was the authority of the commanding officer to bust a man any time he wants? Yes.

Mr. SMART. If he promoted him.

Mr. NORBLAD. That is contrary to what you just said.

Mr. LARKIN. That is right. It is the opposite.

Mr. NORBLAD. This limits that authority, as I understand it.

Mr. LARKIN. The Army heretofore had no authority—the commanding officer—to reduce in grade.

Mr. NORBLAD. He could not break a man from staff to buck, or private.

Mr. LARKIN. Not by company punishment.

Mr. NORBLAD. I see. He could do that by order.

Mr. LARKIN. That is right. But not by company punishment.

Mr. NORBLAD. That was always done for an offense, generally, though—drunk on duty or things like that.

Mr. LARKIN. Not under the Articles of War, Mr. Norblad.

Mr. BROOKS. He can do it now under this by company punishment?

Mr. LARKIN. That is right.

Mr. BROOKS. One grade.

Mr. LARKIN. That is right.

Mr. RIVERS. You mean he cannot bust him completely.

Mr. LARKIN. No. One grade.

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Mr. RIVERS. One grade.

Mr. LARKIN. By this.

Mr. RIVERS. What about at the termination of these offenses here which you have catalogued? Can you make some other offense right thereafter and in substance have it run consecutively?

Mr. LARKIN. I think not, no—not unless he commits another offense.

Mr. RIVERS. I see.

Mr. LARKIN. Because under 15 (a), it says this "in addition to or in lieu of admonition or reprimand."

Mr. RIVERS. I see.

Mr. LARKIN. "Impose one of the following * * * for minor offenses * * *."

Mr. RIVERS. I see.

Mr. LARKIN. Without the intervention of a courts martial.

Mr. RIVERS. Because conceivably if you want to get rid of a man, and I am talking of officers now, who could become offensive to somebody else down the line—and there is quite a lot of jealousy as you know—you can keep on stacking up stuff against a man and get him out of there.

Mr. BROOKS. He could do that without company punishment, by just assigning him continually to offensive duty.

Mr. SMART. I would hate to be the commanding officer who did that, with the right of the accused to appeal this to the next superior authority. If a commanding officer started doing that, it would indicate there is more wrong with him than the accused. His superior is certain to learn this and he will not be in command very long, in my opinion.

Mr. LARKIN. We found that the Army and the Air Force did not desire to extend the punishments that their commanders could impose. The Navy on the other hand felt it necessary for them to have the greater punishments that they now have. What we in effect did, then, was to list both of them, add one to the other and make a complete list which of course for the Army's purposes involves or provides a number of punishments that they have never been authorized to impose and which they do not now desire to impose.

We drew up a comparative chart—which I would like to furnish to you gentlemen and which we might talk about for 1 minute before we go further—which shows the punishments set out in this act as well as the punishments heretofore provided in the Articles of War, those heretofore provided in the Articles for the Government of the Navy, and those that were in the proposed Navy bill introduced in the Eightieth Congress on which there was never a hearing.

I would like to offer, Mr. Chairman, this for the record. I will furnish the stenographer with a copy. If Mr. Smart will pass it out now, it will show you what I mean.

(The document referred to is as follows:)

C. O. PUNISHMENT

STATUTORY PROVISIONS IN U. C. M. J. COMPARED WITH STATUTORY PROVISIONS OF A. W., A. G. N., AND PROPOSED A. G. N. AS LIMITED BY REGULATIONS

1. Who may impose

U. C. M. J.—(1) Any commanding officer—Secretary of Department can restrict categories of C. O.'s authorized to exercise; (2) Officers-in-charge—limited as to punishments.

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A. W.—C. O. of any detachment, company, or higher command. Power cannot be delegated.

A. G. N.—C. O. of a vessel and any officer empowered to convene a general or summary court martial. An officer who commands by accident, or in the absence of the C. O., except absence on leave, may impose only confinement.

Proposed A. G. N.—C. O. of a vessel and any officer empowered to convene a summary court; latter may delegate to subordinate officers on separate or detached duty authority to inflict most punishments, except loss of pay. An officer who commands by accident, or in the absence of the C. O., except absence on leave, may impose only confinement or suspension from duty.

2. Right to trial by court martial

U. C. M. J.—Secretary of Department may specify that accused shall be permitted to demand trial by court martial.

A. W.—Accused may demand trial.

A. G. N.—No right of refusal.

Proposed A. G. N.—No right of refusal.

3. Right of appeal

U. C. M. J.—Appeal to next superior authority permitted—in the meantime, punishment is carried out.

A. W.—Same as U. C. M. J.

A. G. N.—No appeal provision.

Proposed A. G. N.—No appeal provision.

4. Remission and suspension

U. C. M. J.—Officer who imposes punishment, his successor in command, and superior authority may suspend, set aside, or remit *any part or amount* of the punishment and restore all rights, privileges, and property affected.

A. W.—Same as U. C. M. J. except action is limited to *unexecuted portion* of punishment and no provision for suspension.

A. G. N. and proposed A. G. N.—No provision.

5. C. O. punishment as jeopardy

U. C. M. J.—C. O. punishment not a bar to trial by court martial for a serious crime or offense growing out of same act or omission, but may be shown on trial as mitigating factor in sentence.

A. W.—Same as U. C. M. J.

A. G. N. and proposed A. G. N.—Never a bar to trial, and cannot be shown in mitigation or as an indication of guilt.

6. Table of punishments

Punishment	U. C. M. J.[1]		A. W.[2]	
	Officers and warrant officers	Other military personnel	Officers and warrant officers	Other military personnel
Admonition or reprimand	Yes [1]	Yes	Yes	Yes.
Withholding of privileges	2 weeks	2 weeks	1 week	1 week.
Restriction to limits	do	do	do	Do.
Forfeiture of pay	½ per month for 6 months.[3]	½ per month for 1 month.[6]	½ per month for 3 months.[5 7]	No.
Extra duties		2 weeks (not to exceed 2 hours a day).	(?)	1 week.
Reduction in grade	No	Yes [9]	No	No.
Confinement	do	7 days	do	Do.
Confinement on bread and water or diminished rations.	do	5 days	do	Do.
Solitary confinement	do	No	do	Do.
Hard labor without confinement	do	do	do	1 week.
Arrest	do	do	do	No.
Suspension from duty	do	do	do	Do.

See footnotes at end of table, p. 928.

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6. Table of punishments—Continued

Punishment	A. G. N.[1]		Proposed A. G. N.[1]	
	Officers and warrant officers	Enlisted personnel	Officers and warrant officers	Enlisted personnel
Admonition or reprimand	Yes	No	No	No.
Withholding of privileges	No	Yes (no limit)[4]	do	1 month.[4]
Restriction to limits	do	No	do	No.
Forfeiture of pay	do	do	½ per month for 1 month.[5 6]	½ per month for 1 month.[4 6]
Extra duties	do	Yes (no limit)	No	1 month.
Reduction in grade	do	Yes	do	Yes.
Confinement	10 days	10 days	10 days	10 days.
Confinement on bread and water or diminished rations.	No	5 days	No	5 days.
Solitary confinement	do	7 days	do	No.
Hard labor without confinement	do	No	do	Do.
Arrest	10 days	do	10 days	Do.
Suspension from duty	do	do	do	Do.

[1] 1 punishment may be imposed, in addition to or in lieu of admonition or reprimand.
[2] Punishments may be combined; but total of confinement, restriction, withholding of privileges, and extra duties, cannot exceed 1 week.
[3] 1 punishment only; reprimand classed as a punishment.
[4] Shown as deprivation of liberty on shore.
[5] If imposed by an officer exercising G. C. M. jurisdiction.
[6] If imposed by an officer exercising special C. M. jurisdiction.
[7] Not applicable to general officers.
[8] In time of war or national emergency, or when authorized by Secretary of Navy in time of peace.
[9] If grade from which demoted was established by command or equivalent or lower command.

Mr. LARKIN. If you will look at the chart which runs across the wide page, which is entitled, "Company Officer Punishment," you will notice on the left-hand side there are all the different types of punishments that have been found in either the Articles of War, the Articles for the Government of the Navy, or the proposed Navy Articles.

The first two columns to the right of that whole list are the punishments that are provided in this Uniform Code, article 15 which we are now discussing. The next two columns of course are the Articles of War.

The next two are the Articles for the Government of the Navy. And the last two are the proposed Navy bill.

Now if we just take one, the top one, which is admonition or reprimand, the Uniform Code provides it for officers and other military personnel. The Articles of War so provide for it. The Articles for the Government of the Navy provided it only for officers and not for enlisted men.

The proposed Articles for the Government of the Navy would have deleted it for the Navy.

The next one——

Mr. NORBLAD. What is the value of admonition and reprimand? I could never see where there was any value in having that at all.

Mr. LARKIN. Well, for an officer it is construed as severe punishment since it goes on——

Mr. SMART. One of the arguments that has always been used in trying to defend this disparity of treatment between officers and enlisted men is that a reprimand would go in the officer's record. Competent military men said that a reprimand seriously impairs an officer's future service.

I think it would be more so today where we have a selection system in the Army and the Air Force, the same as the Navy has had, in

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preference to the old seniority rule for promotion. I am sure those reprimands are going to be in the officer's record and any selection board which passes on an officer is going to see them.

They are really pretty serious for an officer.

Mr. RIVERS. His accountability is much more severe.

Mr. SMART. That is correct. It will not affect an enlisted man. He does not care whether you bawl him out or reprimand him. He goes about his business. But it is a source of concern for an officer.

Mr. BROOKS. Article 15 permits it for both enlisted men and officers.

Mr. SMART. That is right.

Mr. BROOKS. Proceed.

Mr. LARKIN. Let us take another one as an example: Withholding of privileges, and also restriction to limits. The Uniform Code provides, for officers and men, 2 weeks in either case.

The Articles of War heretofore provided for both classes 1 week. The Navy had no provision for officers, but for enlisted personnel, while they did not call it withholding of privileges or restriction to limits, they had a similar punishment which, in footnote 4, is shown as deprivation of liberty on shore, which is similar.

Mr. RIVERS. What is the duration? How many weeks?

Mr. LARKIN. There was no limit.

Mr. RIVERS. Oh, I see.

Mr. LARKIN. In the Navy.

Mr. RIVERS. I see.

Mr. LARKIN. The proposed Navy bill would have provided a 1-month limit. Now there, in the Navy, we had no limit but a proposal by them of 1 month. And in the Army it was 1 week. What we did substantially was to strike an average and take 2 weeks.

That indicates how some of this compromise and give-and-take went on, of course, in this whole study.

Now to go down further. Let us skip to "Confinement" because that is an important one.

Mr. BROOKS. Why not take that "Forfeiture of pay"?

Mr. LARKIN. All right.

There we have provided one-half month's pay for not more than 3 months for officers, and one-half month's pay and not more than 1 month for enlisted men. The Army heretofore had half a month's pay for 3 months for officers and none for enlisted men.

The Articles for the Government of the Navy have never had that provision. The proposed Articles for the Navy had provided for both officers and men one-half a month's pay for 1 month.

Mr. ANDRESEN. Mr. Chairman, I understood him to say the first column was one-half pay per month for 3 months. This reads 6 months.

Mr. LARKIN. I thank you. That is a typographical error; I am sorry.

Mr. ANDRESEN. That is right.

Mr. LARKIN. It reads 3 months in the bill.

Mr. RIVERS. Three months in the first column?

Mr. LARKIN. Yes, Mr. Rivers.

Mr. RIVERS. Well, 3 months for the officers and 1 month for the enlisted men?

Mr. LARKIN. That is right; yes.

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Mr. BROOKS. Why is there that difference between officers and enlisted men?

Mr. LARKIN. I take it because the officers get a larger salary. It is not as much of a burden as it would would be on the enlisted man for that period. And then, again, it is to balance off the fact that there is no provision for confining officers.

There has not been and is none, whereas here there is a provision for confining enlisted men.

Mr. ELSTON. If you took that much pay from an enlisted men he never would reenlist.

Mr. LARKIN. That is possible.

Mr. RIVERS. Then, too, the officer has more responsibility.

Mr. SMART. Mr. Chairman, this provision relative to officers was written into H. R. 2575 during the last Congress. There was serious complaint lodged as to the disparity of treatment between officers and enlisted men.

Up until the time of H. R. 2575 the President was authorized to exempt whatever classes he desired from trial by summary and special courts martial. He, historically, has exempted officers from trial by special or summary court.

As a consequence, we were confronted with the situation of an enlisted man and an officer returning to the post both equally drunk and disorderly. The enlisted man might get a summary or a special court, but the officer's commanding officer was faced with doing one of two things with him: Since he was not triable by a summary or special court, he either had to reprimand or admonish him under the 104th Article of War or submit him to trial by a general court martial.

Now, admittedly he should not get off, but commanding officers were reluctant to subject an officer to trial by a general court. It is an extremely serious thing for an officer, as well as an enlisted man.

Now in order to get around that, we provided that officers were subject to special trial, the same as enlisted. They are still exempt from trial by a summary court martial. But I do not think you are going to find any officer being tried by a special court.

The Army and Air Force have had the jurisdiction to do that since the 1st of February, when H. R. 2575 went into effect, and I doubt that any officer has been tried by a special court.

Now what else can you do to them? The committee was of the opinion that the only thing that they could do was to increase the commanding officer's punishment so that he could forfeit some of his pay.

And it has been generally said that it was perhaps the most effective thing that the committee did, so far as curbing recalcitrant officers was concerned: Reach in their pocket and take some of their money.

I still think it will have a very beneficial effect. But I would like to point out to the committee that H. R. 2575 gave the officer the option to refuse this punishment, thinking he might get that much of a forfeiture and elect to stand trial by court. This bill does not provide for such an option unless granted under subsection (b), by regulation.

Mr. BROOKS. This forfeiture of one-half of the pay does not cover other benefits such as we will say rations, housing, quarters——

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Mr. SMART. You will notice the language of the bill says "Forfeiture of one-half pay." It does not say allowances. It is one-half pay, and I construe the language to limit it to base and longevity pay.

Mr. BROOKS. And that is the same for both officers and enlisted men.

Mr. LARKIN. That is right.

Mr. SMART. Except for the enlisted man the forfeiture is only one-half for 1 month.

Mr. RIVERS. What did you say about longevity?

Mr. SMART. Both base and longevity pay will be subject to the forfeiture.

Mr. RIVERS. How do you read longevity into it there?

Mr. SMART. That is part of his pay.

Mr. RIVERS. Oh, I see.

Mr. SMART. To the exclusion of his allowances.

Mr. RIVERS. I see. Let me ask Mr. Larkin this question.

Mr. LARKIN. Surely.

Mr. RIVERS. Which one of those sentences that the commanding officer can impose, that you have cataloged there, represented the largest and the most difficult ones to resolve or compromise in your deliberations?

Mr. LARKIN. Well, the confinement and the bread-and-water rations of course were the points of major issue. The Army does not desire to use them. They never have had them. The Navy feels that it is very necessary that they continue to have them.

So the compromise really amounted to providing for them in the statute, and then providing that the Army and the Navy can continue to choose to go forward with their present practice by the terms of 15 (b).

Under 15 (b), I draw your attention, we provided that the Secretary of a department may by regulation——

Mr. RIVERS. I see.

Mr. LARKIN. Place limitations on the powers granted by this article with respect to the kind and amount of punishment authorized.

Now you will recall that many of the witnesses who appeared before you last week were critical of this article in that it in their minds extended and provided for more serious punishment than the Army or Air Force heretofore have been authorized to impose.

By virtue of (b), however, the Army and the Air Force—their Secretaries, that is—can elect to instruct their commanders not to impose the sentences that are provided under (d), (e), and (f), as well as (g), if they desire. The Army can prevent its commanders from imposing anything more than they now have the right to impose, except for the fact that restrictions and withholding of privileges has been extended to 2 weeks rather than 1.

The Navy on the other hand can continue to impose 7 days' confinement or 5 days on bread and water.

Now of course the Army does not care whether the Navy does that, and the Navy does not care if the Army does not wish to do it.

Mr. RIVERS. That is right.

Mr. LARKIN. But the difference and the desire to have the provision for confinement in the Navy springs substantially from their shipboard operations.

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Mr. RIVERS. Well the Navy has found that from experience a master of a ship has to be the master.

Mr. LARKIN. That is right, and they found that as to a man on shipboard who commits minor offenses or is just not in step—is malingering or doing any number of other irritating things—to withhold privileges from him or to confine him to the ship is not much of a punishment.

He is already confined to the ship and probably has been for a month while they are at sea.

Mr. RIVERS. That is right.

Mr. LARKIN. It just does not do much good. He has not any place to go anyhow.

Mr. RIVERS. That is right.

Mr. LARKIN. And unless you can confine him more restrictively, for instance, 7 days in the brig, why you are not giving him any punishment at all or you are not impressing on him the necessity of stopping the conduct which he is engaging in. For that reason it is quite necessary in their view, and of course the Army has no objection whatever to them doing that.

They recognize that it is a different kind of disciplinary problem that is faced by the Navy. For that reason, rather than delete the 7 days' confinement and bread and water and hinder the Navy and rather than force the Army to use it when they do not want it and do not feel they need it, we felt the most appropriate way was to provide these punishments in the statute and then let each Department determine which ones of these different and various punishments that are set forth are necessary for their own disciplinary problems.

I can I think forecast for you right at this minute that if this is phrased this way the Army and the Air Force will immediately instruct their commanders not to impose confinement and bread and water and that the Navy will permit their commanders to carry out those punishments.

It is by virtue of this arrangement that we get this flexibility and the ability of each of the services to go forward on their own.

Now we strove very hard for uniformity throughout this code and I think we have achieved about a 99 percent uniformity. This is one of the few provisions under which it is possible for the service to have something less than complete uniformity and as far as we were able to determine the different practice seemed to be dictated or seemed to be desirable by virtue of what is admittedly a different operation.

We just could not solve it any other way. No one was able to say that the Army's present or the Navy's present punishments are just perfect for all three services and they have to be squeezed into a form, one way or the other.

Mr. GAVIN. All three services now are in complete accord with your suggestion?

Mr. LARKIN. Yes, sir. They all subscribe to this technique and feel that it is the best way to solve what is probably a meritorious and sound difference in their disciplinary problems.

Also remember, this is not of course, court-martial procedure.

Mr. RIVERS. Did you ever come across the case where an officer warranted such a procedure, say with an ordinary troublemaker aboard ship?

Mr. LARKIN. Well, you will notice here that an officer is still not subject to confinement under this.

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Mr. RIVERS. I see. I mean have you ever found a case where the Navy would warrant such treatment?

Mr. LARKIN. I will ask Captain Woods.

Captain WOODS. I do not think our officers are very often recalcitrant, sir. If they show indications that way, that would be taken up in their fitness reports very promptly by their commanding officer and our selective process would operate to eliminate them very soon.

Mr. RIVERS. They go back to that fitness report that Mr. Smart mentioned.

Mr. BROOKS. Mr. Smart, we want to hear from you on this, too.

Mr. LARKIN. There is another point, Mr. Chairman.

Mr. BROOKS. All right, go ahead, Mr. Larkin, and finish.

Mr. LARKIN. The third point of difference I mentioned before was this question whether or not a person brought before a commanding officer could refuse the punishment.

Now unfortunately this is a complicated problem which you just cannot decide, it seems to me, based on the company punishment alone. It is one of a large number of differences we found. In the Army at company punishment there is the provision that it can be refused.

In the Navy at mast there was no privilege of refusal. But when we get to the next higher court in the hierarchy—this is not a court at all, but when you come to your first inferior court: The summary in the Army and what used to be called the deck in the Navy, why we found just the opposite.

In the Army it was provided that no one can refuse the summary court trial except the two top noncommissioned grades—they were given the right—whereas in the Navy deck everybody who was subject to it was given the right to refuse it and ask for the next higher court.

Now to take it by services: In the Army you could refuse company punishment but you could not refuse summary punishment, unless you were one of the top two noncommissioned grades.

In the Navy it was the opposite: You could not refuse mast. You had to take the punishment, that is any of these punishments.

Mr. RIVERS. Yes.

Mr. LARKIN. But if you were given a summary court, you could refuse it and demand trial by a higher court, in which case you might have been awarded a summary in the Navy, which is a special, for the Army, or a general court.

So we found on each level opposite practices, and trying to make that uniform was a very difficult job. And frankly we just could not. There, again, it grew out of the different practices and the different operations.

The Army has felt that it is appropriate protection to the man to allow him to refuse company punishment: These four or five relatively minor punishments. They felt that he ought to be able to ask for a court martial, in which event he could be awarded a summary, special, or general.

In the Navy it has been felt that at mast—the equivalent to company punishment—particularly on shipboard——

Mr. RIVERS. No alternative?

Mr. LARKIN. That no one should have the right to refuse. That from their point of view as to operations is the most important point of discipline. You have not arrived at your court martial structure.

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The captain of the ship ought to without having the man refuse, be able to impose for the disciplinary purposes of the ship these various punishments. However, they felt that if a man had a deck court—and incidentally I might stop using all those terms—they are confusing—because we actually have been able to agree on names for the courts.

We have adopted the Army names so that we have now summary, special, and general.

Mr. RIVERS. That is all services.

Mr. LARKIN. For all the services. So if I may I will use those terms.

The Navy felt in connection with the summary, the lowest court martial, that since in the Navy it usually is handled—it is always handled by one man of course—by the commander's executive officer, why anybody who has been brought before it ought to have the right to ask for the next higher court: The summary, which is the three-man court.

If a man feels that he is really innocent, why he might feel that he has a better chance of convincing some one of three or several of three rather than just one man. On the other hand, the Army felt that in their summary court—although it was a one-man court it was usually an officer of a higher rank than the officer who could impose company punishment—that except for the two top noncommissioned grades they ought not to be able to refuse it but should have to take it.

Now here is the way we have attempted to solve that: We have provided by this article that in the same way that the secretary of each department may decide which one of these punishments the commanders in that department will impose, so also he should have the right to decide whether or not they are going to allow the people who come up for company punishment to refuse it or not.

I can forecast immediately I think that the Army will give everybody who comes before company punishment the right to refuse it, just as they have been doing in the past.

Mr. RIVERS. That is your lower discipline?

Mr. LARKIN. That is right. Whereas the Navy feels it is not appropriate at sea, when the captain of the ship is imposing it, that the man should have the right to refuse it.

So we are going to leave it, according to this, to each department. And as I say I know they will continue their present procedures, which differ.

However, when you get up to your summary court level, where there is a difference now as I pointed out, we provided in article 20 that everybody should have the right to refuse a summary court except of course anyone who has been given the privilege of refusing company punishiment and did so refuse it.

Mr. RIVERS. I see.

Mr. LARKIN. So that you will not have the situation that he refuses company punishment, is awarded a summary, and then refuses that, too.

Mr. RIVERS. Yes.

Mr. LARKIN. But if he comes before the summary in the first instance, whether it is Army, Navy, or Air Force, they can all refuse it.

Mr. RIVERS. That is right.

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Mr. LARKIN. And get a higher one. In view of the fact that we expect the Army to permit their people to refuse company punishment, then if a man has come before company punishment in the Army and has refused it and is awarded a summary court, he could not refuse that, too.

Now that is complicated I know, but the problem was complicated and the differences were great, and to try to squeeze those differences into one ironclad, uniform provision across the board was just something——

Mr. GAVIN. The Navy has accepted this proposal now, have they not?

Mr. LARKIN. That is right. This proposal as written here and as provided in article 20 is acceptable to the three services.

Mr. GAVIN. And also the changing of the names of summary and special and general?

Mr. LARKIN. Oh, yes; yes, sir.

Mr. RIVERS. Now, is there any real need for a special court?

Mr. LARKIN. Well, the special is a court. It is a more formal procedure than the company punishment.

Mr. RIVERS. And with a greater number of judges?

Mr. LARKIN. There are no judges but there must be not less than three members.

Mr. RIVERS. You go from three to how many?

Mr. LARKIN. Not less than five.

Mr. RIVERS. One to three to five.

Mr. LARKIN. That is right.

Mr. BROOKS. Now, did I understand it that it is your prediction that the Navy will not permit the enlisted persons to refuse company punishment?

Mr. LARKIN. That is right. That is their present practice, and they feel it is necessary and they intend, as of this minute, to invoke their discretion in that fashion.

Mr. BROOKS. And what paragraph does that come under?

Mr. LARKIN. That is 15 (b).

Mr. BROOKS. Any further questions on this?

Mr. LARKIN. The criticism that this is increasing punishments, and so forth and so on, actually based on the exercise of the Departmental discretion I do not think holds water, frankly.

What it really does is permit each service to go according to their present practice at the same time. Now that is the best judgment we could form on this.

Mr. ELSTON. In other words, so far as the law itself is concerned, offenses are uniform.

Mr. LARKIN. That is right.

Mr. ELSTON. If one service wants to place certain limitations within their own service, they may do so by an order of the Secretary of the Treasury.

Mr. LARKIN. That is right.

Mr. ELSTON. But, so far as the law itself is concerned, everything is uniform.

Mr. LARKIN. That is right.

Mr. ELSTON. And by virtue of the authority granted in subsection (b) to permit the Secretaries of the service to issue regulations placing limitations on the exercise of the authority granted.

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Mr. LARKIN. Yes.

Mr. ELSTON. They may proceed just as they have in the past.

Mr. LARKIN. That is exactly right, Mr. Elston.

Mr. GAVIN. Mr. Chairman?

Mr. BROOKS. Mr. Gavin.

Mr. GAVIN. On page 13, at subsection (c): "If imposed by an officer exercising general courts-martial jurisdiction," it has been suggested to me that that be made to read "if imposed by an officer authorized to exercise appointing authority with respect to general courts martial."

Mr. RIVERS. Explain it.

Mr. BROOKS. What is your idea there?

Mr. GAVIN. Well, it takes it away from command control and authorizes the man who is exercising or appointing the authority rather than the commandant who is now making the recommendation.

Mr. RIVERS. What about if we set up a separate JAG? Does this go back to convening authority?

Mr. GAVIN. I do not know. This is a suggestion that was made to me and I would like to hear a discussion on it.

Mr. ELSTON. In other words, you are taking the position that a single officer does not exercise general courts-martial jurisdiction?

Mr. GAVIN. That is right.

It should read "if imposed by an officer authorized to exercise appointing authority with respect to general courts martial," and then follow with that forfeiture of one-half of his pay per month for a period not exceeding 3 months.

Mr. ELSTON. That is subsection (a) (c)?

Mr. GAVIN. That is subsection (a) (1) (c).

Mr. ELSTON. (a) (1) (c).

Mr. GAVIN. That is right.

Mr. BROOKS. Yes.

Mr. GAVIN. And also it goes into section (2) (g), on page 14.

Mr. ELSTON. I think Mr. Smart has come explanation.

Mr. SMART. Of course, I have no idea what the sense of the committee is as to what you are going to do about the appointing authority.

If you leave it as it is now provided in the bill, Mr. Gavin's amendment would not be necessary.

Mr. GAVIN. What article is that?

Mr. SMART. Article 22.

Mr. GAVIN. Make a note on that.

Mr. BROOKS. If there is no objection, the committee will pass that one amendment.

Mr. NORBLAD. May I ask a question, Mr. Chairman.

Mr. BROOKS. Just one moment. Subject to return. Will you make a notation on that, Mr. Smart?

Mr. SMART. Yes, sir.

Mr. NORBLAD. What is the purpose of section (c) on page 15? Is that tied in with section (b) and, if it is, should there not be some definite statement that it is tied in with (b)?

Mr. SMART. I think you will find, Mr. Norblad, that that is a provision written to accommodate the Navy and the Coast Guard where they refer to an officer in charge.

Now in the Air Force and in the Army we have no such designated officer as an officer in charge.

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Mr. NORBLAD. That is right.

Mr. SMART. I think it refers to an officer who may be in command of a unit——

Mr. NORBLAD. A small boat.

Mr. SMART. That is right; isolated and removed from the usual channels of command.

Mr. NORBLAD. Should that not be tied in, then—after the word "prescribed" put a comma and add "in accordance with subsection (b)," or something of that nature.

Mr. LARKIN. I think that is the intention, Mr. Norblad.

I think that is appropriate, all right.

Mr. NORBLAD. To be added.

Mr. LARKIN. Yes.

Mr. NORBLAD. Could that be added—in other words to show that (c) is to be tied into (b)?

Mr. BROOKS. Where is that?

Mr. NORBLAD. Otherwise it is wide open.

Mr. BROOKS. That was the point that was brought to the attention of the chairman in several general statements made before the committee there.

Mr. LARKIN. It is intended to be tied in now. I think you can construe it to be such, where we say "such of the punishments authorized to be imposed."

Mr. NORBLAD. "In accordance with subsection (b)," which would clear the whole thing up.

Mr. LARKIN. Since that is the intention, it certainly does clear it up.

Mr. NORBLAD. I think it should be put in specifically.

Mr. BROOKS. State your language there, Mr. Norblad, so we can get it specifically.

Mr. NORBLAD. The section says that "an officer in charge may, for minor offenses, impose on enlisted persons assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the Secretary of the Department may by regulation specifically prescribe."

Mr. BROOKS. What change do you propose now?

Mr. NORBLAD. "In accordance with subsection (b)," which is the section before, which allows each Department to set up whether they want it by bread and water or confinement or pay forfeiture.

Mr. GAVIN. Where would you insert it?

Mr. NORBLAD. At the end.

Mr. BROOKS. Change the period to a comma and insert the following——

Mr. NORBLAD. "In accordance with subsection (b)," is that right?

Mr. LARKIN. That is right.

Mr. NORBLAD. Of article 15.

Mr. BROOKS. You have heard the suggested amendment. Is there any further discussion on that? If not, we will adopt the amendment.

Mr. ELSTON. Let us get that straight. I am not quite clear.

Mr. NORBLAD. Well, in other words, Mr. Elston, your main article, article 15, sets forth all these various punishments. Then it says under subsection (b) that the Secretaries may limit the punishments in their own service. For example, they tell us the Army will not use the bread and water and the Air Force will not use the bread and water.

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In section (c), the officer in charge may impose on enlisted persons such punishments authorized to be imposed by commanding officers as the Secretary of the Department may by regulation specifically prescribe.

Well, that would leave it wide open, if we do not tie this section (c) in with subsection (b).

Mr. BROOKS. Correct.

Mr. RIVERS. That is right.

Mr. NORBLAD. They could hang them, I think, under that, if the thing is construed broadly enough, for being drunk. It does not hurt it any, but I think it clears up the intent.

Mr. LARKIN. I agree. It was not intended to be different.

Mr. NORBLAD. That will leave it wide open for the Department to prescribe any punishment, I should say, if it is not tied up with that language.

Mr. LARKIN. Yes.

Mr. BROOKS. Now is there any further discussion on the amendment as read?

Mr. RIVERS. Can we hear from Mr. Smart.

Mr. SMART. I have some comments.

Mr. BROOKS. Yes; we want to hear from Mr. Smart. I think it would be a wise thing before we get into a general discussion on these articles to hear from both Mr. Smart and Mr. Larkin in the future.

Mr. RIVERS. We have a roll call.

Mr. BROOKS. I am not prescribing that we are going to sit here after 12 o'clock. If we could hear from Mr. Smart before we leave.

Mr. SMART. I can be brief and state my feelings about this article, Mr. Chairman.

Mr. BROOKS. All right, if you will.

Mr. SMART. We start in here to write a uniform code and we do pretty well until we get down to this article. Now subsection (b) throws this thing wide open to the Secretaries to prescribe what punishments will be invoked.

I cannot escape the feeling that if we pass this the way it is written we are going to come into some headaches further on down the line, because you are going to find that Navy boys on shore have no right to elect to take a court whereas the Army boy does, for exactly the same type of offense.

Now, when you consider the specific types of punishment prescribed, I do not say that they are not all good. But when you consider confinement for 7 consecutive days and this bread and water proposition—those are subsections (E) and (F)—those are things which, so far as I have heard, are insisted upon in the Navy because they need them at sea.

Now, why should the Congress go along here and permit the Navy to give confinement and bread and water ashore for disciplinary punishment and permit enlisted men in the Army and the Air Force to be exempted from the same type of punishment?

You are leaving it completely up to the Secretary. I cannot escape the conclusion that if those things are necessary in order to preserve the command of officers at sea you ought to write it into the bill and say "when at sea, confinement for 7 days," and "when at sea, bread and water for 5 days", so that when you have shore-based

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personnel, be it Army, Navy, or Air Force, they are all subjected to the same thing and in the same manner. I think it is leaving it entirely——

Mr. BROOKS. Mr. Smart, what would you do here: Suppose a Navy contingent was assigned to the Army and was tried by Army courts martial, would you allow that type of punishment to be vested on the Navy personnel by an Army courts martial?

Mr. SMART. Well, when a Navy man becomes attached or assigned to an Army unit, we will say MATS, where they are under Air Force command, at that point I think he would then be subject to the articles as construed by the Secretary of the Air Force.

Mr. RIVERS. I think the Air Force will be a little harder on the Navy than the Army would.

Mr. SMART. All right. But here you have a sailor who is with MATS and as soon as he becomes assigned then if it is an Air Force operation he is not subject to confinement and he is not subject to bread and water, but he is still wearing the Navy uniform.

Mr. BROOKS. An Army man on a transport, would he be subject to bread and water?

Mr. SMART. Of course, the ship's captain is in charge. But assuming you had a large unit moving, let us say, part of a division, with an Army officer there having general courts-martial jurisdiction. I think that officer has continuing jurisdiction, and I think he could punish his men at sea in a method different than when ashore.

That would give Army, Navy, and Air Force and everybody the same rights, when at sea, and give them the same rights when at shore.

Mr. WINSTEAD. What objection does the Navy or anyone else have to writing that provision in?

Mr. GAVIN. May I ask the Navy at this point what kind of an offense would have to be committed to give 5 days on bread and water?

Captain WOODS. Five days; sir, you have a type of man who is recalcitrant, he is pushing subordination and he refuses work, and so forth. That is the most effective sort of punishment. It cures him. The only alternative is court martial, which is on his record for the rest of his life.

Mr. BROOKS. Captain, would the Navy have any objection to putting in "at sea" there?

Captain WOODS. I think we would, sir. We feel very strongly about it, and I would not want to take that responsibility.

Mr. BROOKS. Is the Navy using that type of punishment in shore-based establishments?

Captain WOODS. Bread and water is almost never used. I have had 6 years command and I do not think I used it 10 times. The threat is important.

Mr. ELSTON. Captain, does it not go back to the old theory that you had to provide a more severe penalty for mutiny at sea than you would provide for the same act on shore?

Captain WOODS. Yes, sir. The commanding officer is alone. He has the responsibility for his ship. He must have powers within reason to keep his ship orderly.

Mr. ELSTON. Well, that being so, of course it would not seem to me that it would take any of those powers away from him if you did add

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the words Mr. Smart suggested and say "when at sea," because if he is on shore he certainly has the same facilities for administering military justice that either the Army or the Air Force would.

Captain WOODS. I have two thoughts there, sir; that I could offer. One is that for there to be a difference in system within the Navy itself at sea and ashore, would be undesirable. The other thought is in our set-up at least the commanding officer in assigning a summary court details an officer junior to himself.

It would be a little bit unsatisfactory for him in his mature judgment to assign punishment and to have the man appeal to a subordinate officer and that subordinate officer to assign a lesser punishment.

It puts the commanding officer in a very bad position and it puts the subordinate officer in a very bad position.

Mr. RIVERS. Of course you do not want to take from that commanding officer, whose ship is tied up temporarily ashore, the right to have him aboard his ship. It is where they are attached to a shore establishment.

Captain WOODS. That is right.

Mr. BROOKS. By the same token, though, if it is a necessary punishment, would not an Army transport commander need that type of punishment?

Captain WOODS. I think he would not. At sea, the ship's force are operating the ship. The hazards and the dangers are the commanding officer's of the ships. The others are the passengers.

Mr. BROOKS. But does not the Army in operating a transport furnish personnel which is akin to——

Captain WOODS. I am not familiar with the Army transport situation.

Mr. RIVERS. I can tell you this. I know, I took a trip aboard one of them last year. The transport commander is in charge of the Army personnel aboard the ship, but the captain has the over-all jurisdiction.

I mean the master of the ship has supreme power. Even though the President of the United States is on there, he is the boss.

Mr. GAVIN. He is the captain.

Mr. RIVERS. He is the works.

Mr. NORBLAD. The Army operates more ships than the Navy.

Mr. BROOKS. It seems we better go into that pretty carefully because it will affect the Army and the Navy both.

Mr. ELSTON. Under this section, as it is written, if the Army did see fit to impose bread-and-water punishment on thier ship at sea, they would have the perfect right to do it by order of the Secretary.

Captain WOODS. Exactly, sir; that is right.

Mr. RIVERS. That is right.

Mr. BROOKS. Well, now, if there is no further discussion at this point, it would be a good point to adjourn. We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 12:05 p. m., the subcommittee adjourned to reconvene on Tuesday, March 22, 1949 at 10 o'clock.)

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UNIFORM CODE OF MILITARY JUSTICE

TUESDAY, MARCH 22, 1949

HOUSE OF REPRESENTATIVES
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will please come to order.

When we recessed yesterday we were on article 15 and had not quite completed article 15.

I want to say this to the committee here: the chairman is anxious to get this bill out. Tomorrow if the legislative session is not very heavy it is the purpose of the chairman to suggest that we try to meet tomorrow afternoon as well as tomorrow morning.

Of course if the session is heavy we may not be able to work that out. But we are anxious to make progress and if possible to get this bill out this week.

Yesterday when we adjourned we were debating the question of the imposition of punishment, expecially in reference to this bread-and-water punishment.

We can proceed. Mr. Smart, I think, was discussing the matter at that time.

Mr. SMART. Mr. Chairman, I think it is necessary before we can do anything about this section—we may be able to resolve it speedily—for the committee to reach some conclusion as to what they think the proper policy should be.

We were discussing, particularly, subsection (b) on page 14, which gives the Secretaries of the respective Departments the right to place limitations by regulations on the powers granted in this article.

As I have pointed out to the committee, under the bill as drawn, that is, this particular article, it will be possible for the Secretary of the Navy—and it has already been declared that this is what he will do—to authorize bread and water as well as confinement, for enlisted persons of the Navy.

On the contrary, it has already been pointed out that the Secretary of the Army will by regulation not permit disciplinary punishment which includes bread and water or confinement. Those are long standing practices in each of the services.

If it is the feeling of the committee that it is appropriate for them to continue to do that, then I think you can buy this section almost as written, with one exception or suggestion which I shall make to you.

On the other hand if you think the committee should not only prescribe the maximum punishment which all of the services can exercise but that you should likewise write in the minimum punish-

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ments and that all services must and will have the authority to exercise all of those powers, then we are in trouble.

Mr. DEGRAFFENRIED. Excuse me just 1 minute.

Mr. SMART. Yes.

Mr. DEGRAFFENRIED. As I understand you and Mr. Larkin, the law is the same as to all of the services but you have enough leverage in there to where the Navy can continue to follow their policy and the Army can continue to follow their policy?

Mr. SMART. That is exactly the provision of the bill and that is exactly the purpose of subsection (b) which I am now discussing, Mr. deGraffenried.

Mr. BROOKS. The law will remain the same, but the policy will be a little different in one branch or the other branch.

Mr. SMART. The policy will definitely be different.

The unknown factor here to me is this: I frankly do not know what the committee is going to be faced with when it gets to the floor of the House. In addition to the provisions of the bill I, like you gentlemen, am always confronted with the fact: What will the House buy.

Now, if they kick over the traces when we get to the floor of the House on this thing and start complaining about bread and water and confinement and the fact that some of the services are going to do this thing differently we may very well get into trouble.

On the other hand it might be accepted with an open mind, as they did with H. R. 2575. They accepted it by voice vote without a single dissent. That is matter for you gentlemen to decide.

Mr. RIVERS. Let me say this: We cannot assume any path the House is going to follow.

Mr. SMART. That is right.

Mr. RIVERS. No telling what will happen on the floor.

But the main thing is, as I see it, to decide whether or not we are going to have the Navy pursue a course on shore-based establishments the same as they pursue aboard ship. Personally, I do not think it is necessary and I am going to vote that way.

Now I am not talking about a ship tied up at a dock. It suits me to let them do the same thing aboard ship at a dock as they do aboard ship at sea. But when it comes to shore-based establishments, it is something else—I do not know why we should make fish of one and fowl of the other—because the philosophy is different.

The matter reigns supreme, because of obvious reasons.

Mr. SMART. My thought and my suggestion yesterday, Mr. Rivers, in suggesting that we might prescribe bread and water and confinement when at sea—and, like you, I meant aboard ship——

Mr. RIVERS. Yes.

Mr. SMART. I realize that there are problems at sea. Everyone aboard a ship is restricted or confined, in a certain sense, purely by the nature of the operation and it does not do much good to restrict a man to the limits of the ship, as a punishment, when he is already restricted by virtue of being at sea.

Mr. RIVERS. And you cannot shoot a man aboard ship for deserting because he can only go the length of the ship, while in the Army, he can go the length of the battlefield.

Mr. SMART. That is right. So you have to be a little more severe in extreme cases.

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Mr. RIVERS. That is right.

Mr. SMART. And I think bread and water and confinement are appropriate at sea.

Mr. BROOKS. Would it meet the approval of the committee to approach this matter from the standpoint of reading into subsection (f) a stipulation which would limit that subsection to those serving at high sea?

Mr. RIVERS. Or aboard ship.

Mr. SMART. I would like to point out that my comment is not directed solely to naval personnel. As we all know, we have Army and Air Force troops scattered throughout the world. It may be a safe statement to make that perhaps we have as many soldiers and airmen on ships being transported to and from their overseas stations as we do naval personnel taking them and bringing them.

So my thought was that it would be equally applicable to Army and Air Force personnel on board ship, the same as sailors. But I feel sure that the Navy wants to impose bread and water and confinement as punishment ashore, the same as it does at sea.

Mr. BROOKS. Yes. And some of the witnesses who have testified have indicated they thought there was nothing wrong in that type of punishment. There was Col. Melvin Maas, who said he thought there was nothing wrong with that.

Mr. SMART. Yes.

Mr. BROOKS. And several other Navy witnesses took the same position.

Mr. ANDERSON. Are the provisions of the Elston bill the same as these?

Mr. SMART. No, sir. The Elston bill provides only 7 days' restriction and only 7 days' extra duty. It provides no forfeiture of pay for enlisted men. It provides no confinement for enlisted men. And it provides no bread and water for enlisted men.

Mr. RIVERS. That was an Army bill, though.

Mr. SMART. That was an Army bill and these are practices which the Army has never exercised.

Mr. RIVERS. That is right.

Mr. BROOKS. The Army does use forfeiture of pay; does it not?

Mr. SMART. Not for enlisted men. Only for officers.

Mr. BROOKS. I see.

Mr. SMART. And that is the one point I want to present to you which I think ought to be revised downward.

Mr. RIVERS. We do not want to take a position which will make it difficult for any branch of the service to get recruits, where one branch of the service can advertise—and they do advertise against each other, and you know that yourself—"Join this branch of the service because we do not have bread and water." We do not want to give one the sword of Damocles that the other does not have.

I do not know why it would be any reflection on the line of the Navy or their traditions to confine that punishment to duty aboard ship. It is no reflection on them.

Now we know that the captain cannot get up here and speak for Admiral Russell. Anybody with sense knows that. But I mean we have to speak for our own conscience, too.

I am ready to vote on it, myself.

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Mr. SMART. There is this much to be said for it, Mr. Chairman. While it is a more severe type of punishment than the ground forces have heretofore authorized for purely disciplinary infractions, it might very well be that you will save an enlisted person from going to trial before a courts martial.

Now company punishment goes on a so-called company-punishment book. It does not go on the enlisted man's service record. It does not hound him the rest of his service period.

So, even though he got confinement and bread and water, it might be the very thing that makes a man out of him, rather than let him go along and end up before a court which goes on his service record and definitely is a detriment to him for the rest of his service. So there is that much to be said for this type of punishment.

Mr. ANDERSON. What appeal does he have from confinement on bread and water?

Mr. SMART. Under this present bill, Mr. Anderson, when a man receives disciplinary punishment under this article, it goes to the next superior command if requested by the accused. Upon request, it will go to the next superior command, who will review it with full authority to remit any part of it. And that is all.

Mr. ANDERSON. But he cannot appeal from company punishment for a trial by a special court?

Mr. SMART. No, sir.

Now, I should point out there that is the Navy practice. And the man has no choice. He must take it. But in the Army they have given the man the option to take disciplinary punishment or a court martial. If he takes it, he is bound by it. He must exercise his option before disciplinary punishment is assessed.

But, if he takes the option to receive the punishment, he gets it and has no appeal. If, on the other hand, he says, "I do not want to take company punishment; I want a court," then they give him a courts martial and he is bound by any sentence which the court gives.

Mr. GAVIN. Well, the Army is here. Why do we not hear some expression from the Army as to their reason—or you, Mr. Larkin.

Mr. BROOKS. Well, the Army does not care, as I understand it; is not that true?

Mr. LARKIN. Well, let me put it this way, Mr. Chairman: The three services agree on this as written.

Mr. BROOKS. Yes.

Mr. LARKIN. Now, Mr. Smart has brought up a number of points in connection with the whole article. I think if we could take them up one by one, perhaps we could resolve them.

Yesterday the first point brought up by Mr. Smart had to do with the possibility of further limiting the punishments provided in (e) and (f); in other words, confinement for 7 days and confinement for 5 days with bread and water.

Now, if that is the only point before the committee, it is relatively easy of solution.

Mr. BROOKS. That is really what the situation resolves into.

Mr. LARKIN. However, Mr. Smart has brought up this morning additional points.

One additional point, for instance, is the question of whether or not the right to refuse this punishment should be left to the discretion of the individual Secretary or not. That is another and very important

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part of this whole article. I just do not know what the committee's views are on any of these or just what problem the committee would like me to address myself to.

Mr. BROOKS. What is the pleasure of the committee? Are there any suggested changes or amendments?

Mr. RIVERS. Mr. Chairman, in order to get the thing to a head, I just move that we direct our lawyer to draw up the proper amendment.

Mr. BROOKS. For what?

Mr. RIVERS. Limiting the Navy to bread and water aboard ship or on the high seas—or any other branch of the service that operates ships.

Mr. BROOKS. I think that is the thing we ought to dispose of first.

Mr. RIVERS. I move that.

Mr. BROOKS. Well, you have heard the motion now——

Mr. GAVIN. Bread and water be limited purely to the Navy; is that right?

Mr. ANDERSON. At sea.

Mr. RIVERS. At sea or aboard ship, where they may be tied up at a dock.

Mr. BROOKS. It is not limited to the Navy, is it—just to anyone aboard ship?

Mr. GAVIN. How did you want your amendment to read?

Mr. RIVERS. That was the sense of it. I suggested that he draw up an amendment.

Mr. SMART. One question, Mr. Rivers. Do you mean to limit this bread and water for 5 days and confinement for not to exceed seven consecutive days so that it will be applicable to all enlisted persons, whatever their branch might be, aboard ship and beyond the continental limits of the United States?

Mr. RIVERS. What is that "beyond the continental limits"? That is a new one.

Mr. ANDERSON. That would include Hawaii, Alaska, the Philippines, Guam, and so on.

Mr. SMART. That is correct.

Mr. RIVERS. You mean bread and water at those places?

Mr. SMART. Yes, sir. I am merely inquiring as to what you mean?

Mr. RIVERS. I mean aboard ship.

Mr. ANDERSON. I think we should leave out the continental limits of the United States as suggested by Mr. Smart and confine it strictly to that point of aboard ship.

Mr. RIVERS. I think so, too.

Mr. BROOKS. A proviso that says that this type of punishment shall be available only while the individual is aboard ship.

Mr. RIVERS. Either on the high seas or in port.

Mr. SMART. And equally applicable to the Army, Air, and Navy?

Mr. RIVERS. That is right.

Mr. ANDERSON. Well, you do not have to say "on the high seas or in port" if you say "aboard ship."

Mr. RIVERS. That is right.

Mr. ANDERSON. It does not make any difference where the ship is.

Mr. RIVERS. You better write it out because some of these people have peculiar interpretations.

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Mr. LARKIN. Well, there is this difficulty about construing the proposed language: What about the case where two stewards are assigned to a ship as part of its crew and it is in harbor. Suppose they get into a fight on the dock, are they aboard ship or are they not?

Mr. RIVERS. Technically, they are aboard ship because they are assigned to the ship.

Mr. LARKIN. Well "assigned to the ship" may be better language.

Mr. ELSTON. Well, it is possible that they might have a fight on the dock and the ship would be scheduled to sail the next day.

Mr. LARKIN. That is right.

Mr. ELSTON. And they could not confine them on bread and water. The commander would not have the same authority over them that he wants to have while he is in command of a ship. So, it would seem to me that there must be some definition of what "aboard ship" means.

Mr. LARKIN. That is my point, Mr. Elston.

Mr. ELSTON. Well, is there such a definition?

Mr. ANDERSEN. Ask the Navy.

Mr. ELSTON. What about it, Captain?

Captain WOODS. You have the language "attached to a ship."

Mr. RIVERS. "Aboard or attached to a ship."

Captain WOODS. That would not cover the Army who are passengers aboard a transport.

Mr. ANDERSON. Yes, but the Army does not use it anyway, Captain

Captain WOODS. My understanding is that your proposed amendment would cover them.

Mr. ANDERSON. Well, if we amend it as suggested by Mr. Rivers we make it available to the Army, but the Army is going to direct that it not be used.

Mr. RIVERS. By direction of the Secretary.

Mr. LARKIN. Still within the limitations of the discretion of the Secretaries.

Captain WOODS. But, if you use the language "attached to a ship" that would not permit the Army to use it because they would be passengers.

Mr. BROOKS. You could say "attached to or aboard a ship."

Captain WOODS. That would do it.

Mr. ANDERSON. What we are trying to do now is adopt the policy.

Mr. LARKIN. That is right.

Mr. ANDERSON. And the technical language can be worked out after we decide what will be the policy.

Mr. RIVERS. That is right.

Mr. ANDERSON. Why do we not vote on the motion now?

Mr. BROOKS. All right; all in favor of the motion as indicated by Mr. Rivers make it known by saying "aye." Opposed, "no."

The ayes have it. Therefore, if Mr. Smart will get together with these gentlemen who are interested in the matter and draft a suggested amendment, we would like to take it up in the next meeting.

Mr. LARKIN. All right.

Mr. BROOKS. Now, is there any other controversy about this article?

Mr. ANDERSON. Mr. Smart said he had another suggestion with reference to subsection (b).

Mr. SMART. Well, no. My suggestion at this point goes to forfeiture of pay.

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You will remember that in H. R. 2575 we provided for a forfeiture not to exceed 3 months of 50 percent of an officer's pay under this article. While the House subscribed to it without a dissent, I cannot escape the conclusion that that is too stiff a penalty for disciplinary infractions.

Now, let us see what it would mean. Let us take the lowest-ranking officer, which is the ensign in the Navy or the second lieutenant in the Army or Air Force. In either case, the base and longevity pay of an officer of that grade will be $200 or more, so that a 50-percent forfeiture for 1 month means that you can fine that officer a hundred dollars or more. I cannot escape the conclusion that we should not be more severe than that.

And, of course, as you go on up to the higher grades and get up to the field-grade officer, it might amount to as much as $200.

Mr. RIVERS. Would that be reflected on his fitness report in addition?

Mr. SMART. Very definitely. Even a reprimand goes on his so-called fitness report in the Navy or efficiency report in the Army or Air Force.

Mr. BROOKS. Well, I thought it was testified that company punishment is not reflected.

Mr. SMART. For enlisted persons, Mr. Brooks.

Mr. BROOKS. But it is reflected for officers?

Mr. SMART. It very definitely reflects upon an officer's record.

Mr. RIVERS. There are two reflections. One is tangible property, his pay; and the other is the record that he compiles day by day.

Mr. SMART. That is correct.

And I would like to further point out on the question of forfeiture of pay for enlisted persons that the Navy has not heretofore had it, and this is the first time that it has been provided for the Army or Air Force enlisted men.

I have a rather strong feeling that you ought to reduce the forfeiture relative to officers from 3 months to 1 month and further consider the advisability of removing any forfeiture provisions so far as enlisted persons are concerned.

Mr. ELSTON. You may have the case of an enlisted man making allotments to his wife and his children, in which cases they would be seriously affected.

Mr. SMART. This goes only to his pay, Mr. Elston, and not to his allotments.

Mr. ELSTON. I meant a voluntary allotment of his pay. You would be penalizing the family as well as the enlisted man.

Mr. SMART. That is correct, sir.

Mr. ANDERSON. Let me get this straight now. Do I understand that your suggestion is in subparagraph (c) on page 13: "If imposed by an officer exercising general courts-martial jurisdiction, forfeiture of one-half of his pay per month for a period not exceeding —" you would reduce that 3 months? Is that your suggestion.?

Mr. SMART. Yes, sir.

Mr. ANDERSON. And then on page 14, in subparagraph (G): "If imposed by an officer exercising special courts-martial jurisdiction"— you would cut out that whole paragraph?

Mr. SMART. If that is the will of the committee. You would delete (G) on page 14. That would remove any forfeiture provision for en-

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listed persons. And the other one would reduce it from 3 months to 1 month as to forfeiture for officers.

Remember, this is not a judicial punishment. This is a disciplinary punishment.

Mr. BROOKS. You have heard the suggestion, gentlemen. I will put it in the form of a motion. The suggestion as indicated, is to reduce the period not exceeding 3 months to read "a period not exceeding 1 month", in subsection (1), subparagraph (c). Any further discussion on it? If not, are you ready for a vote?

Mr. LARKIN. May I ask that Colonel Dinsmore be heard before the committee makes up its mind, Mr. Chairman?

Mr. BROOKS. Colonel, will you step forward, sir, and give us your idea.

Colonel DINSMORE. Mr. Chairman, the Army is not in favor of forfeiting pay of enlisted men by arbitrary disciplinary action. We think that ought to be reserved for a court. We think the enlisted man is entitled to that protection from arbitrary action by an unreasonable commanding officer.

It was testified on behalf of the Army when the Elston bill was under consideration that the Army is in favor of extending the forfeiture on officers to 3 months, to be imposed only by authority of an officer exercising general courts-martial jurisdiction. That is still the Army's position.

Mr. GAVIN. But nothing on enlisted men?

Colonel DINSMORE. That is right.

Mr. RIVERS. Nothing on any arbitrary deprivation of a man's right to retain his salary?

Colonel DINSMORE. As to officers only.

Mr. BROOKS. The Army's position in reference to nonjudicial punishment by the commanding officer apparently then is to omit any recommendation of a forfeiture of pay for officers or enlisted——

Colonel DINSMORE. That is not correct. Enlisted men only. But officers for 3 months.

Mr. RIVERS. After they have been before a court of proper jurisdiction?

Colonel DINSMORE. No, sir; by company punishment.

Mr. LARKIN. It is right in here.

Mr. DEGRAFFENRIED. He said by an officer who had the power of exercising general courts-martial jurisdiction.

Colonel DINSMORE. I am afraid I did not make myself clear.

Mr. BROOKS. Just take this off the record, so we can straighten this out.

(Discussion off the record.)

Mr. BROOKS. Now back on the record.

The Air Force does not recommend forfeiture of pay for enlisted men?

Colonel MAXEY. No, sir.

Mr. BROOKS. And that is the position of the Army?

Colonel DINSMORE. That is right.

Mr. BROOKS. And the Navy takes a similar position?

Captain WOODS. Yes, sir.

Mr. BROOKS. Then who does recommend this forfeiture of pay for enlisted men?

Mr. SMART. Only the bill itself.

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Mr. ANDERSON. Then, why is it in the bill?

Mr. BROOKS. Well, I will entertain a motion.

Mr. ELSTON. I move, Mr. Chairman, that subparagraph (G) under article 15 (a) be deleted.

Mr. BROOKS. It is (2), is it not?

Mr. ELSTON. Beginning on line 20 and extending through line 22. It is (a) (2), subsection (G).

Mr. RIVERS. That is right, (a) (2), subsection (G).

Mr. BROOKS. You have heard the motion, gentlemen. Are you ready for the question?

Mr. ANDERSON. Yes.

Mr. BROOKS. All in favor of the motion will make it known by saying "aye." All opposed, "no." No opposition. Therefore that amendment carries and paragraph (G) is stricken out.

Now what about the forfeiture of pay for the officer? Any further discussion? Any motions? If not——

Mr. ANDERSON. Mr. Chairman, I move that article 15 (a) (1) (c) be amended, on page 14, line 1, to read 2 months instead of 3 months.

Mr. BROOKS. In that case the Navy would be opposed to that reduction?

Captain WOODS. No, sir.

Mr. ANDERSON. We can strike a compromise here.

Captain WOODS. I do not think the Navy feels strongly about it.

Mr. RIVERS. Why did the Navy select 3 months?

Mr. LARKIN. You people recognized 3 months in the Elston bill.

Mr. DEGRAFFENRIED. I will follow Mr. Smart's recommendation.

Mr. ANDERSON. Well, we can work it out by voting on it.

Mr. RIVERS. As a substitute motion to the motion of the gentleman from California I move, 1 month.

Mr. GAVIN. Well, split the difference and make it a month and a haof.

Mr. RIVERS. Move it, then.

Mr. BROOKS. Forty-five days.

Mr. SMART. Make it even months, whatever the number is.

Colonel DINSMORE. May I be heard, Mr. Chairman?

Mr. BROOKS. All right, sir.

Colonel DINSMORE. As to its purpose, the Army's view was that it would reduce trials. You see, there was criticism that officers and enlisted men were not treated equally and we wanted more authority over the officer. That was the purpose of it.

Mr. RIVERS. Then, you see, if an officer keeps on forfeiting 1 month of his pay you can give him a general court. That will put a stop to it.

Mr. BROOKS. Well, it seems to me it is going to make very little difference whether you have 1 month or 3 months there because the fact that he is punished by a forfeiture of pay is going to be in my judgment the big thing.

Mr. RIVERS. It will be reflected on his fitness report.

Captain WOODS. His fitness report is the big thing.

Mr. RIVERS. I move 1 month.

Mr. BROOKS. Furthermore, you have the difference between enlisted men and officers.

Mr. ANDERSON. Mr. Chairman, just briefly on the motion I made—I am trying to find a compromise here, too—it seems to me as long as

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the officer has the right to appeal from a decision by a superior depriving him of one-half of his pay for 2 months, he has the right to appeal and ask for a general court martial, I do not think is too stiff a penalty.

Mr. BROOKS. What is the motion now?

Mr. ANDERSON. I moved to make it 2 months and Mr. Rivers moved to make it 1 month.

Mr. BROOKS. The gentleman from California makes a motion, as a substitute, to make it 2 months. We will vote on the substitute first and then on the original motion to make it 1 month——

Mr. RIVERS. No. The original motion was for 2 months and I offered a substitute motion to make it 1 month.

Mr. SMART. Before you vote——

Mr. BROOKS. Then we will vote on the amendment to the motion.

Mr ANDERSON. That is right.

Mr BROOKS. Mr. Smart, do you care to say something?

Mr. SMART. I just want to point out: I think you have a slightly mistaken idea, Mr. Anderson. It is not an appeal, but it is an option as to whether or not he accepts the punishment in the first instance. Now if he says, "I will take the punishment," then he gets a 2 months' forfeiture under your motion. He has no appeal from that.

Mr. ANDERSON. He has the option.

Mr. SMART. He has the option in the first instance.

Mr. LARKIN. But he also has the option thereafter.

Mr. DEGRAFFENRIED. Mr. Smart, does he have that option before he knows what his punishment is going to be or after he knows what it is going to be?

Mr. SMART. He has his option before he knows what the punishment is going to be.

Mr. DEGRAFFENRIED. Say, for example, he did not think his punishment was going to be that great and he moved to accept it and he tried by disciplinary measures there. Then if he got more than he thought he was going to get he has no right of appeal?

Mr. SMART. He has only an appeal to the next superior authority.

Mr. DEGRAFFENRIED. But not to a court martial?

Mr. SMART. Not at all. I would call it an appeal when you follow a judicial process, not when you go up the line of command to the next superior authority.

Mr. ELSTON. Now, Mr. Chairman, last year we provided that there could be a demand by the accused for trial by courts martial.

Mr. SMART. Before he received the punishment.

Mr. ELSTON. Yes. Now that has been left out of this bill.

Mr. SMART. Mr. Elston, may I point out to you there, again, the provision in (b) whereby the Secretary may prescribe whether or not there is going to be an option. And it is anticipated under (b) that an option will be provided for Army and Air Force personnel but no option will be provided for Navy personnel.

Mr. GAVIN. Why?

Mr. SMART. By virtue of the policy of the respective services for many, many years.

Mr. BROOKS. However, under subsection (d) he has the right of appeal. It uses the word "appeal."

Mr. ELSTON. Only to the next superior officer.

Mr. BROOKS. He has that right, to the next superior officer.

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Mr. ELSTON. But he cannot demand trial by court martial unless the Secretary of the Army and the Secretary of the Air Force issue regulations and authorize it.

Mr. RIVERS. That is right. That appeal is not worth a tinker's dam.

Mr. DEGRAFFENRIED. That is right.

Mr. BROOKS. You heard the motion, gentlemen. It was originally moved by the gentleman from California to substitute for 3 months the term 2 months, as sought to be amended by the gentleman from South Carolina, reducing the forfeiture period for officers down to 1 month.

Are you ready to vote? All in favor of the amendment as proposed by the gentleman from South Carolina make it known by saying "Aye." All opposed, "No." The amendment has carried, which in effect reduces the forfeiture period to one month.

If there is no further discussion, then——

Mr. ANDERSON. Mr. Chairman, there is just one thing I want to ask for purpose of clarification. Mr. Smart, or Mr. Larkin, we will take a hypothetical case of a naval officer. Say he is a commander who has had a tour of duty here in Washington and he is assigned to Guam or wherever it is. On his way out there under orders he is a transient. He is traveling through San Francisco.

His boat does not sail for 2 or 3 days. He decides to paint the town red. He is guilty of conduct unbecoming an officer. To whom is he responsible? Who has the power to impose punishment on that transient officer if he does that say out in the 12th Naval District on his way out to the Pacific?

Captain WOODS. The District Commandant, sir. He reports to him for transportation and he is his commanding officer while he is there.

Mr. ANDERSON. I see. And the District Commandant has the authority to either impose company punishment or direct a court martial.

Captain WOODS. That is correct, sir.

Mr. ANDERSON. Or whatever the officer has done requires in the way of punishment.

Captain WOODS. That is correct.

Mr. ANDERSON. I see. Thank you.

Mr. ELSTON. Mr. Chairman, for the record I would like to get it a little clear about why the Navy and the Army should have a different rule about appealing to a special or general courts martial if the offender does not want to accept company punishment.

Mr. LARKIN. Perhaps I can explain that, Mr. Elston. The theory of the Navy has been that company punishment is purely and simply for discipline and the punishments that can be imposed are relatively minor.

The captain of a ship, to use that example, has to have some sanctions. They feel that at that level for these minor offenses for which only relatively minor offenses can be imposed he should be supreme and he should have the right to impose them because fundamentally it is a disciplinary matter covering minor infractions.

Mr. ELSTON. Well I——

Mr. LARKIN. The——

Mr. ELSTON. Pardon me.

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Mr. LARKIN. They feel, however, when they go to the next step and get into the hierarchy of courts martial in the summary court, which is the lowest court martial, that when a man comes before that one-officer court he should have the right to refuse a one-officer court and get a three- or five-officer court.

The Army and Air Force on the other hand have not felt that their disciplinary problems are such that at company punishment it is necessary to make the man take the punishment. So at that point by virtue of their disciplinary problems they give him the right to refuse it. But when he gets up to the lowest court in the hierarchy of courts, which is the summary court, they say there he has not the right to refuse it unless he happens to be of the two or three top noncommissioned grades.

So it is substantially a difference in philosophy or a difference in what is felt to be the needs for disciplinary action.

Colonel DINSMORE. May I say something——

Mr. ELSTON. Just before that, Colonel. I can understand all that as far as an enlisted man is concerned, but I am just wondering if an officer of the Navy who receives disciplinary punishment should not be entitled to an appeal to a court martial?

Colonel DINSMORE. I think I can answer that, Mr. Elston.

Mr. ELSTON. All right.

Colonel DINSMORE. Captain Woods will correct me if I am wrong. In the Navy, company punishment is ordinarily imposed by the master of a ship.

Now if you give an appeal to a court that court necessarily will be less experienced and of lesser rank than the man who imposed the punishment, so that you are appealing from a superior to an inferior.

In the Army, company punishment is ordinarily imposed by a commander of the company and the appeal for a court goes to an officer who is senior and more experienced.

Mr. ELSTON. I am principally asking this question just to clarify it because when we get to the floor of the House we will no doubt have to explain it.

Captain WOODS. That is entirely correct. It is a punishment and if you allow an automatic appeal or an optional appeal it goes to some junior. That junior is in the extraordinary position of saying that the captain's judgment is wrong.

Mr. LARKIN. It goes to the junior officer by virtue of the fact that the summary court officer is usually the captain's executive officer. There is no one else around.

Mr. BROOKS. When the party accused is on board a ship there is no higher ranking officer than the master of the ship, is there?

Captain WOODS. That is the position, sir.

Mr. BROOKS. That answers it. Is that all right?

Mr. ELSTON. That is all right. I just wanted the explanation.

Another thing we may have to explain is the expression: "If imposed by an officer exercising general court martial jurisdiction." Now what officer is that?

Mr. LARKIN. There are only a very limited number who have general court martial jurisdiction. They are spelled out, incidentally, in article 22. Only the top ranking officers have general court martial jurisdiction.

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The admirals of a fleet, the generals of an Army, and officers of that rank.

Mr. ELSTON. I thought it ought to be in the record.

Mr. BROOKS. Mr. Elston, on one of the days when you were not here we covered most of that. It is in the record. But it is all right to have it repeated there.

Mr. LARKIN. That is right.

Mr. RIVERS. We do not have a general of the Army and a fleet Admiral now.

Mr. SMART. He means a general in the Army, perhaps, who is commanding a division. Ordinarily general court-martial jurisdiction is not vested in any Army officer lower than a divison commander.

Mr. LARKIN. That is right.

Mr. SMART. Which involves 15,000 troops or thereabouts.

Mr. ANDERSON. Did he not say it is spelled out in a subsequent article?

Mr. LARKIN. Twenty two.

Mr. SMART. Article 22, sir.

Mr. ELSTON. Which we have not yet considered.

Mr. BROOKS. Now——

Mr. SMART. I have just one question to raise purely for the record, before you leave this section.

Mr. BROOKS. All right, Mr. Smart.

Mr. SMART. I refer to page 15, in section (c), as to what is the meaning of "an officer in charge." The reason I raise the point is that I understand that the Coast Guard has a different interpretation of those words than has the Navy.

Mr. RIVERS. Where are the Coast Guard?

Mr. SMART. The Coast Guard is represented by Commander Webb. Is there a different interpretation, Commander Webb?

Commander WEBB. Yes. Our definition of "officer in charge" includes warrant officers and petty officers in charge of a station. We have many very small stations, such as lifeboat stations or light stations, all along the coast and along the major rivers of the country.

We have extended that definition to include those petty officers in charge of those stations.

Mr. SMART. Would it cure the defect so far as the Coast Guard is concerned if we added an amendment which would say: "A commissioned officer in charge"? That would exclude the right for enlisted persons to administer company punishment.

Commander WEBB. It would necessitate a change in our administrative control of those small stations. It has been a very difficult and serious problem for us to maintain any measure of discipline at those small stations.

The Department is very well aware of the fact that new consideration along this line would be a bad case of the tail wagging the dog. We had hoped that it could be left open so that we could give some measure of commanding officer's punishment to those warrant officers and petty officers in charge under the regulations provided for in subsection (A) (2) (b).

Mr. SMART. Well, do you feel that the section as written on page 15, subsection (c), would result in any difficulties for the Coast Guard or is it all right as written?

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Commander WEBB. We feel that it is all right as written and would require a coordination of definition with the Navy and what we have to give up administratively is in the best interests of all the services.

Mr. SMART. That is all right.

Mr. RIVERS. That might be very true. But you take, for instance, those of us who are familiar with what the Coast Guard does. It has stations all up and down the United States. You have a problem peculiar to our own service.

Commander WEBB. Right, sir.

Mr. RIVERS. And it might not be good for the service to deprive you of that, because I know plenty of them in my district where you have a chief at the head of a lifeguard station.

Commander WEBB. That is right. We want to give the chief there the authority.

Mr. RIVERS. That is right.

Commander WEBB. We think the definition might work out a little different for the Navy and the Coast Guard.

Mr. SMART. So long, Mr. Rivers, as they have the authority, on page 14, under subsection (b), or line 23.

Mr. RIVERS. The Secretary of the Department.

Mr. SMART. The Secretary of the department may prescribe those regulations. But I did want to get that in the record and point out that there is a difference between the Navy definition and the Coast Guard definition.

Mr. RIVERS. And there is no intention on the part of this committee to deprive the Coast Guard of its existing recognized authority.

Commander WEBB. If the Congress will go along with a slightly changed definition for the Coast Guard officer in charge, that leaves us just as we are now with the authority we needed.

Mr. RIVERS. That is right.

Mr. BROOKS. Now, gentlemen, article 16 brings up part 4 of the bill. We only have about 5 minutes.

Mr. ANDERSON. I suggest we recess, Mr. Chairman, because we are going to have a vote over there very shortly.

Mr. BROOKS. If there is no objection, we will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 10:55 a. m., the subcommittee adjourned to reconvene on Wednesday, March 23, 1949, at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

WEDNESDAY, MARCH 23, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will please come to order.

Yesterday, gentlemen of the committee, when we adjourned we had just completed article 15. So this morning we will begin on article 61.

Mr. Smart, will you read article 16.

Mr. SMART. May I make one suggestion before you go on that, Mr. Chairman?

Mr. BROOKS. What is it?

Mr. SMART. It is still in regard to articld 15, on the question of forfeitures and it is purely a corrective thing.

You will notice that we have in subsection (c), beginning at the bottom of page 13: "If imposed by an officer exercising general court-martial jurisdiction, forfeiture of one-half of his pay per month for a period not exceeding 1 month," now that would seem to say that if you exercise that forfeiture that you must forfeit the full one-half and have no right to forfeit any less than one-half.

I do not think that that is the intent. I think the intent is to forfeit anything up to but not to exceed one-half.

Mr. BROOKS. Well, is that not, though, based not on the percentage but based on the part of the month, that is the month or fraction thereof?

Mr. SMART. I construe it to be upon the full month's pay.

Mr. BROOKS. It says "not exceeding 1 month."

Mr. SMART. Then it likewise should say "not to exceed 50 percent."

Mr. BROOKS. You have heard the suggestion there, as a corrective measure, to so frame subsection (e) that it will read "forfeiture not exceeding one-half of his pay for a period not exceeding 1 month."

Mr. SMART. That is right, sir.

Mr. BROOKS. Is there any objection to that?

Mr. ANDERSON. No objection.

Mr. BROOKS. All right.

Now let us proveed with article 16.

Mr. GAVIN. Let me go back there now. We have taken out in that second section article (G)?

Mr. RIVERS. That is right.

Mr. ANDERSON. That is right.

Mr. BROOKS. Yes.

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Mr. SMART (reading).

ART. 16. Court martial classified.

There shall be three kinds of court martial in each of the armed forces, namely:
(1) General courts-martial, which shall consist of a law officer and any number of members not less than five;
(2) Special courts-martial, which shall consist of any number of members not less than three; and
(3) Summary courts-martial, which shall consist of one officer.

References: A. W. 3, 5, 6, 7; A. G. N., articles 27, 39, 64.

Commentary: This article consolidates provisions as to types of court martial and number of members. As the term "summary" is felt to be more appropriate for a court of one member than for a court of three members, present Army and Air Force terminology is retained. Maximum limits are believed unnecessary. The law officer of a general court martial replaces the law member under the present Articles of War. The law officer is specified in paragraph (1) to show that he is not a "member." See also articles 26, 39, and 51.

Mr. BROOKS. Any discussion or objection?

Mr. RIVERS. Let me say this. I was talking to Commander Webb of the Coast Guard and he called to our attention the fact that the Coast Guard itself only has about 25 lawyers in the whole corps. I wonder if we could not take care of the situation which he has. I was asking him these things. Here he is now. We better protect the Coast Guard set-up.

Mr. SMART. May I say, Mr. Rivers, that that question will arise when we get to article 22.

Mr. RIVERS. I see.

Mr. SMART. It is not pertinent to article 16.

Mr. RIVERS. Five lawyers on a general court would take about all the lawyers they have.

Mr. LARKIN. May I point out that these are court members, who do not have to be lawyers, you see.

Mr. RIVERS. That is right.

Mr. BROOKS. If there is no objection to article 16, we will approve it as read——

Mr. GAVIN. May I ask a question?

Mr. BROOKS. Yes.

Mr. GAVIN. What other comparable courts are there in the Navy now or have been?

Mr. LARKIN. They are exactly the same, Mr. Gavin, except they were named as follows: General court, summary court, and deck court.

Mr. GAVIN. Now they will all be known as general court, special court, and summary court?

Mr. LARKIN. Yes, sir.

Mr. BROOKS. Just a change of the wording.

Mr. RIVERS. It is a good thing.

Mr. BROOKS. The terminology.

Mr. LARKIN. That is right.

Mr. BROOKS. Well, let us proceed, then, with article 17.

Mr. SMART (reading):

ARTICLE 17. Jurisdiction of courts-martial in general.

(a) Each armed force shall have court-martial jurisdiction over all persons subject to this Code. The exercise of jurisdiction by one armed force over per-

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sonnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review subsequent to that by the officer with authority to convene a general court-martial for the command which held the trial, where such review is required under the provisions of this Code, shall be carried out by the armed force of which the accused is a member.

References: None.

Commentary: Subdivision (a) authorizes reciprocal jurisdiction among the armed forces, but makes the exercise of such jurisdiction by any force subject to regulations prescribed by the President. Such regulations will enumerate those situations in which one armed force may try personnel of another armed force. This method of providing for the exercise of reciprocal jurisdiction permits flexibility, in that new situations for which the exercise of such jurisdiction may be desirable, can be provided for as they arise.

The provision in subdivision (b) is particularly applicable to cases where reciprocal jurisdiction has been exercised and is therefore placed in this article. The same practice will be following in all court martial cases, however. The disposition of records under article 65 is controlled by this subdivision.

Mr. BROOKS. Now, would you mind giving an explanation of that, Mr. Smart?

Mr. SMART. I will leave that to Mr. Larkin, if I may, Mr. Chairman.

Mr. BROOKS. All right.

Mr. SMART. But I point out to the committee that this is the article which provides for reciprocal jurisdiction of one service over the personnel of another.

Mr. RIVERS. Now what does (b) say?

Mr. LARKIN. (b) says that after the trial in the event that an Army court has tried a Navy man or an Air Force man——

Mr. RIVERS. That is right.

Mr. LARKIN. That after the trial is concluded then the review of that case will be undertaken by the accused's own service.

Mr. RIVERS. I see.

Mr. BROOKS. It is put in there to guarantee that there will be no prejudice on account of service?

Mr. LARKIN. Well, there will be no prejudice, if you will, on account of being tried by the courts martial of a different service.

Mr. RIVERS. We want to avoid any criticism by somebody who wants to make headlines, such as some newspaper set-up of whatever nature it may be who may be partial to one branch of the service using such a thing as that to bring about an unwarranted commentary or criticism. I know that is what you had in mind.

Mr. LARKIN. That is right. We felt that it may be necessary and appropriate and result in an efficient use of courts if the Army, the Navy or the Air Force under certain circumstance, do try men of another service when they are operating with them.

Mr. RIVERS. Your classic example is the MATS.

Mr. LARKIN. That of course is a permanent operation at this time. We expect if we are ever in a war again that there will be joint operations of various kinds which will dictate or indicate that it is sensible to have this reciprocal jurisdiction. We just cannot tell what they will be at this time.

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Mr. RIVERS. That is the only appreciable dilution of one service, that is a mix-up of different services we have now in existence, is it not, to amount to anything, and that is the MATS?

Mr. LARKIN. MATS is at this time I think the principle one. There is one other circumstance I believe where there are some Army engineer officers who I think have been assigned on a relatively permanent basis to the Air Force.

Mr. RIVERS. I see.

Mr. LARKIN. Just how much that is going to grow as unification grows, is hard to tell at this time, but it was our idea to provide by statute for reciprocal jurisdiction and then as closer and closer operations come into being we provide that the President prescribe when this reciprocal jurisdiction should operate. But we need to have the authority in the first instance. If we do not have it, then it can never operate, you see.

Mr. RIVERS. I see.

Mr. BROOKS. This provides a workable set-up for the theory of carrying on war by task force?

Mr. LARKIN. That is right.

Mr. RIVERS. That is right.

Mr. LARKIN. But it leaves it flexible so that we can appraise the character and nature of these different task forces as they are made up and depending on their nature at that time we can ask the President to provide reciprocal jurisdiction. If he does not do it, why then the exercise does not take place.

Mr. BROOKS. Any suggested amendments? No objection to the article?

Mr. GAVIN. None.

Mr. BROOKS. Or further discussion.

Mr. GAVIN. No.

Mr. BROOKS. Then it is approved as read.

Article 18.

Mr. SMART (reading):

ART. 18. Jurisdiction of general courts-martial.

Subject to Article 17, general courts-martial shall have jurisdiction to try persons subject to this Code for any offense made punishable by this Code and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this Code. General courts-martial shall also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war.

References: A. W. 12.

Commentary: This article is derived from A. W. 12. The punishments which may be adjudged are changed from those "authorized by law or the customs of the service" to those "not forbidden by this code" because the law and customs of each of the services differ. Cruel and unusual punishments are forbidden in the code; other punishments which may be adjudged will be made uniform by the regulations prescribed by the President under article 56.

Mr. BROOKS. Now, Mr. Larkin, what does that last sentence mean?

Mr. LARKIN. Well, that is provided, Mr. Chairman, so that a general court martial can act as a military tribunal if necessary and when it does so act that it will operate under the laws of war. It is a precautionary type of provision. It rarely happens, I take it, but in the event it ever became necessary, that jurisdiction would be provided.

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Mr. BROOKS. Now that does increase the discretion in reference to the type of punishment to be used.

Mr. LARKIN. It makes it equivalent to the types of punishment that a military tribunal can impose.

Mr. BROOKS. In the preceding sentence we limit the type of punishment to any punishment not forbidden by the code. Now does that sentence add anything to the types of punishment?

Mr. LARKIN. Yes, it does, I should say, if the court martial is acting as a military tribunal and not as a court martial.

Mr. BROOKS. What does it do toward increasing the types of punishment?

Mr. LARKIN. Well, it enables the court martial then to impose the same kind of punishments that a military tribunal could impose under the laws of war.

Mr. RIVERS. On civilians, too.

Mr. LARKIN. That is right

Mr. BROOKS. Do you interpret that to mean cruel and unusual punishment—any type?

Mr. LARKIN. Well, I do not believe cruel and unusual punishments are permitted under the laws of war.

Can you answer that, Colonel Dinsmore?

Colonel DINSMORE. Those are set out very specifically, Mr. Chairman, in the laws of war. It is well settled what punishment you can adjudge. This is primarily designed for the trial of spies, saboteurs, and people like that, and not military personnel.

It does not change anything from the present articles. That is in the Articles of War right now, in that language. It has been there a long time.

Mr. RIVERS. Is that the code you operate under in the occupied territory of Europe?

Colonel DINSMORE. No, sir. Those are military government courts.

Mr. RIVERS. I see.

Mr. SMART. May I raise one technical question here while Colonel Dinsmore is on his feet. In line 13 the words are used "law of war." I am wondering if that should not say "laws of war." I think "laws of war" are words of art which have a specific meaning, whereas "law of war", I doubt, would have the same meaning. What is your reaction to that?

Colonel DINSMORE. The present article says "law of war."

Mr. BROOKS. What is a law of war?

Colonel DINSMORE. "Law of war" is set out in various treaties like the Geneva convention and supplements to that.

Mr. BROOKS. International law.

Colonel DINSMORE. Yes, sir.

Mr. RIVERS. The law of war was "whoever gets there the fustest with the mostest."

Mr. BROOKS. Any further discussion of this?

Mr. LARKIN. May I offer a clarifying amendment to the first sentence. Since we drafted this article and reread it, we feel to make it perfectly clear we should add the words after the word "code" which is the last word of the sentence "including the penalty of death when specifically authorized by this code."

Now we provide under certain punitive articles that the penalty of death may be imposed. Unless it is so provided of course it cannot

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A classical example of the military tribunal is the trial of the Lincoln conspirators.

That was a military commission appointed by the President.

Mr. RIVERS. Have you finished, Mr. deGraffenried?

Mr. DEGRAFFENRIED. Yes, sir.

Mr. RIVERS. I would like to ask, in connection with my chairman's observation, is this the same provision which was excepted to by Colonel Oliver and Colonel Maas about bringing these Reserves that are meeting under their jurisdiction. They come under a general anyway?

Mr. SMART. This is not the article. There you were referring to article 2 and subsection (a) of article 3, and not this. This has nothing to do with it, Mr. Rivers.

Mr. RIVERS. All right. I just did not want to overlook that.

Mr. BROOKS. Any further discussion? If not, and there is no objection to article 18 as amended; it will stand approved.

Article 19.

Mr. SMART (reading):

ART. 19. Jurisdiction of special courts martial.

Subject to article 17, special courts martial shall have jurisdiction to try persons subject to this Code for any noncapital offense made punishable by this Code and, under such regulations as the President may prescribe, for capital offenses. Special courts martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this Code except death, dishonorable discharge, dismissal, confinement in excess of six months, hard labor without confinement in excess of three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for a period exceeding six months. A bad-conduct discharge shall not be adjudged unless a complete record of the proceedings and testimony before the court has been made.

References: A. W. 13; proposed A. G. N., articles 17, 20.

Commentary: This article is derived from A. W. 13. Special courts martial are given the authority to try capital cases under such regulations as the President may prescribe instead of when the officer with general court martial jurisdiction over the case authorizes it. The Navy proposes this procedure so that prior blanket authority may be obtained for capital offenses to be tried by special courts aboard ship where circumstances make it desirable, since it is not practicable to refer such a case to the officer with general court martial jurisdiction. Death is added to the list of punishments which a special court martial may not adjudge, to cover the cases where a special court tries what would otherwise be a capital case. Other restrictions on punishment are adopted from A. W. 13. It is intended that special courts martial shall not have jurisdiction to try offenses for which a mandatory punishment has been prescribed by this code.

The provision in A. W. 13 that a bad-conduct discharge adjudged by a special court martial is subject to approval by an officer with general court-martial jurisdiction has been deleted from this article. The review of special courts-martial records and the execution of sentences are covered in articles 65, 66, and 71 of this code.

Mr. RIVERS. What is the consistency about the forfeiture of the pay? In other words, they are disciplined down the line. Now we have the forfeiture of pay under the code.

Mr. SMART. This is the result of an action of a courts martial as a part of a sentence of a court martial, whereas the other is a punishment for disciplinary infractions.

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Mr. RIVERS. Is this out of line with our thinking along that line?

Mr. SMART. Not at all, Mr. Rivers. This perpetuates existing law as far as the Army is concerned, and it brings the Navy's present provisions up to equal those of the Army and Air Force.

In other words, while a special court would have the jurisdiction to try any case, they are limited by this section here to give a man not more than 6 months' confinement and not more than a forfeiture of two-thirds pay per month for 6 months.

But they can give confinement for 6 months or confinement for 3 months at hard labor, and they may likewise give a bad-conduct discharge.

Mr. RIVERS. That goes to all officers and enlisted men, alike?

Mr. SMART. And officers have been subjected to trial by this court, as you say, the same as enlisted men.

Mr. RIVERS. That is right.

Mr. SMART. Heretofore, historically, officers have been exempted from trial by special and summary courts.

Mr. RIVERS. I see.

Mr. SMART. H. R. 2575 made Army and Air officers subject.

Mr. ELSTON. The provisions of this section are substantially the same as the provisions of the bill we passed last year?

Mr. SMART. Exactly, Mr. Elston.

Mr. RIVERS. I see.

Mr. LARKIN. For the three services now.

Mr. ELSTON. Yes.

Mr. BROOKS. And it results in a uniformity of procedure in the courts.

Mr. LARKIN. Yes.

Mr. RIVERS. Did you have any trouble with the services on this?

Mr. LARKIN. No. Their present procedures were similar. There were little differences in the maximum limits of punishment, but we had no trouble in agreeing that this is appropriate.

Mr. BROOKS. If there is no objection to the article as read, let it stand as adopted——

Mr. SMART. Mr. Chairman, before the committee adopts it——

Mr. BROOKS. Mr. Smart.

Mr. SMART. I would like to say that there has been some criticism by previous witnesses as to permitting a special court, which may not have lawyers as prosecution and defense counsel, which will not, except in extreme cases, have a law member, to adjudge a bad-conduct discharge.

Mr. BROOKS. That was criticized by two or three witnesses.

Mr. SMART. It was, Mr. Chairman.

Mr. BROOKS. However, this, Mr. Larkin, does not cover dishonorable discharges but merely bad-conduct discharges?

Mr. LARKIN. That is right.

Mr. ELSTON. However, it is provided that if there is a discharge for bad conduct a complete record must be made so that it can be reviewed.

Mr. RIVERS. That is right.

Mr. LARKIN. And we also provide in the review section, as you will see when we get to it, that such cases are reviewed in the same way that a general courts martial case is.

Mr. SMART. I want to point out one more point there.

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Mr. BROOKS. Yes.

Mr. SMART. I am reluctant to extend this discussion, but I want to point out again the same point I made when this provision was adopted in 2575: As of today, the Navy summary, which is the equivalent of the Army special court, has a reporter who makes a question-and-answer transcript of the entire proceeding. You have a complete record, the same as at a general court. In the Air Force, as late as last October at least, they had a reporter present who made a complete transcript of the record, but they only made an extract of that record for review and, in the event any question arose as to the legality of the proceedings, they then ordered the reporter to prepare a complete question and answer transcript and send it forward for review.

In the Army they do not have reporters for all of their special-court cases. This provides that before they can give a bad-conduct discharge there must have been a reporter there.

Now my point is this: I may be wrong and I would like to have perhaps Colonel Dinsmore as the representative of the Army speak for them—I cannot escape the conclusion that where Army special courts have a reporter present for some of their trials and not present at other trials that when a special court sits and sees a reporter there it seems like a cue to them that the convening authority intended that a bad-conduct discharge would be a portion of the sentence.

I do not know what is going to happen to that, but I have the strong feeling that if that is ever taken up to the courts it may be held to be a prejudicial error. I merely want the committee to know the situation before they approve it.

Mr. BROOKS. What does Colonel Dinsmore say?

Colonel DINSMORE. That is correct, Mr. Chairman. I will read the paragraph applicable in the Manual for Courts Martial now in force. It is short.

Mr. BROOKS. You mean, you feel it is prejudicial? Is that what you mean by "correct"?

Colonel DINSMORE. No; I mean Mr. Smart's statement is correct.

Mr. BROOKS. Yes.

Colonel DINSMORE (reading):

> If a case involving an offense punishable by bad-conduct discharge is referred for trial to a special courts martial, the appointing authority may direct by his signed endorsement that it be tried without a reporter, if the interest of the service does not appear to require that a bad-conduct discharge be adjudged

Mr. BROOKS. Is that prejudical to the defendent or does the defendent gain comfort from the knowledge that the reporter is not there?

Mr. SMART. Well, I am thinking about the defendant when the reporter is there.

Mr. DEGRAFFENRIED. If the reporter is there, it might put the court martial itself on notice of the fact that whoever sent the reporter there is expecting the probability that the defendant will receive the bad-conduct discharge.

Mr. SMART. That is exactly my point.

Mr. DEGRAFFENRIED. The court is put on notice of the fact that that is what they are expected to do, and it might prejudice the right of the defendant for them to be under that impression when they start out on the trial of the case.

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Mr. SMART. That is my point exactly. For instance, now you will have a special court convened to try maybe 15 cases, and they try four or five without a reporter and the sixth case comes up and here comes a reporter, so they all say, "Look out, the old man expects us to give a BCD in this case."

Mr. BROOKS. Who orders the reporter, Mr. Smart? Is it the trial officer?

Mr. SMART. The convening authority, sir.

Mr. BROOKS. The convening officer.

Mr. SMART. The same one who appoints the court and counsel and the law member, in the case of general courts.

Colonel Maxey, do you have an opinion on that matter?

Colonel MAXEY. If I may be heard just a moment. The Air Force recognized that possibility that you raised. I might point out this additional fact, however, that wherever a reviewing authority sends a case to a general court martial which he could send to a special, he thereby is indicating, on your same reasoning, Mr. Smart, that a dishonorable discharge is appropriate.

I am not too concerned with the prejudice because we have done this: We have informed all of our judge advocates in a conference that in any special court martial case in which a bad conduct discharge was authorized a reporter would be present, so in any case in which a reporter is not present the sentence authorized for that offense does not include a bad-conduct discharge.

Mr. SMART. Well, may I——

Colonel MAXEY. Just one second.

Mr. SMART. All right.

Colonel MAXEY. So if a reporter is present all the court has before it is an offense which the manual prescribes as one which may carry a bad-conduct discharge. So they will not know what the convening authority's opinion is on a particular case, you see.

Mr. DEGRAFFENRIED. But, Colonel, even in cases where you can give a bad-conduct discharge does not the convening authority or whoever sends the reporter there, if he thinks the facts of that particular case although the man is charged with an offense that might carry a bad-conduct discharge does not warrant a bad-conduct discharge he does not have to send a reporter there and sometimes does not send one there?

Colonel MAXEY. Well, in order to avoid that very practice we required that he do so, Mr. deGraffenried.

Mr. DEGRAFFENRIED. How about the Army?

Colonel MAXEY. I do not know how they operate.

Colonel DINSMORE. I would like to make it clear, it is normal practice for the reporter to be present unless the convening authority says no. So you have a reporter in every case, unless it is specifically provided that you do not have.

Now all these cases may or may not carry bad-conduct discharges. The same argument would hold, it seems to me, Mr. Chairman, as to a general court case where the court has authority to adjudge a dishonorable discharge.

Mr. ELSTON. Mr. Chairman, may I ask Colonel Dinsmore?

Mr. BROOKS. Yes.

Mr. ELSTON. Would it be an undue hardship if the services were required to have a reporter in all special court martial cases?

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Colonel DINSMORE. Yes, sir. We have not the money, Mr. Elston, and we have not the reporters. I suppose if you gave us the money we could get the reporters, but it would cost a good deal and we do not think it is necessary.

Mr. DEGRAFFENRIED. Would it cost much if you had this provision, that in every case where the court had a right to give a man a bad-conduct discharge a court reporter should be present?

Mr. GAVIN. That is about the stiuation now.

Mr. RIVERS. That is the special court.

Mr. DEGRAFFENRIED. No. As I understand it now he can either send a reporter there or not, is that right, Mr. Smart?

Mr. SMART. Mr. deGraffenried, the Air Force says that that is the policy which they follow.

Now within this code there is the provision that the President may prescribe a table of maximum punishments. Now once that is done—and that will be followed of course—it will prescribe every punishment for which a special court may give a bad-conduct discharge—may give, not must give.

Now on that basis this may be all right. It does not tell the court they have to give it to a man, but it is one of the possible punishments and basis it may and on that basis it may not be prejudicial in the way that I think of it. It might be perfectly all right, if the Army will provide a reporter in every special case where a bad conduct discharge is authorized as a portion of the sentence.

Mr. DEGRAFFENRIED. That is right. I asked Colonel Dinsmore if that would cost too much.

Mr. SMART. Certainly there will be hundreds and thousands of special court cases where a bad-conduct discharge is not authorized as a portion of the sentence and there is no reason why they should have to furnish a reporter.

Mr. DEGRAFFENRIED. My idea is if in those cases where a bad-conduct discharge may be prescribed in some of those cases a court reporter is present in the Army and in other cases he is not present that when the court reporter is present it might put the court on notice of the fact that is what they were expected to so.

Mr. SMART. That is my point, Mr. deGraffenried, and that is the thing I want the committee to understand.

Mr. RIVERS. Now, how many times does the defendant know what the offense for which he is charged could carry as a maximum?

Mr. SMART. Well, he knows the maximum he can get because the table of maximum punishments prescribes it.

Mr. RIVERS. You mean everytime a GI is locked up, he knows exactly what the maximum is?

Mr. SMART. His counsel will——

Mr. RIVERS. Wait. I just asked you as a practical situation.

Mr. SMART. Yes, sir. His counsel can open up the new Manual for Courts Martial for the Air Force, for instance and look at pages 140, 141, and 142 and see very extensive tables there which set out the maximum tables of punishments for specific crimes.

Mr. RIVERS. And he knows the minute he is put in the clinker that he is charged with so and so and he can look at the book and say "Well the most they can give me is so and so if they give me this there will be a reporter present," is that right?

Mr. SMART. Well, I do not know that that is exactly right.

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Mr. RIVERS. I am just asking you. I have known plenty cases in my experience where they did not know what it was they had done.

Mr. GAVIN. Does his counsel give him that information, though? That is the question.

Mr. SMART. Yes, sir, his counsel may look at the table of maximum punishments and upon the basis of the charges and specifications can tell him whether or not he is charged with a crime which may include a bad-conduct discharge as a portion of the sentence.

Mr. RIVERS. That is only after the Elston Act, though?

Mr. SMART. No.

Colonel DINSMORE. No.

Mr. SMART. We have had the maximum table of punishments for long years before the Elston Act.

Mr. PHILBIN. How about the record on appeal? What portion of the record comes to the appeal and the counsel?

Mr. RIVERS. The whole works.

Mr. SMART. If there was a bad conduct discharge adjudged as a portion of the sentence, a complete question and answer transcript must go up for complete review.

Mr. BROOKS. Let me ask you this, Mr. Smart. Would it help any if we stipulated in this article wherever it is appropriate that the reporter may be requested by the trial officer? Would that help any?

Mr. SMART. I doubt that.

Mr. BROOKS. What you are trying to do is to take this away from command influence?

Mr. SMART. Well, not necessarily that, Mr. Brooks.

Mr. BROOKS. Because it seems to me, if I were the defendant in a trial like this, I would be pleased not to see a reporter there.

Mr. SMART. Yes.

Mr. BROOKS. Now the only thing is when the reporter is there, does that indicate by his presence that the commanding officer sent him there to get a bad-conduct discharge? Now, if he is not sent there by the commanding officer, but requested by the trial officer, would that make a difference?

Mr. SMART. Yes; I think it would make this difference: The trial officer may very well ask for a reporter in a defense that does not even include a bad-conduct discharge as a part of the sentence.

Mr. GAVIN. Yes; that is all right. But that is not customarily done; is it?

Mr. SMART. No, sir.

Mr. GAVIN. You cited an instance where there would be a number of cases tried and four or five of them would have no reporter. Then on the sixth case the reporter comes in.

Mr. SMART. Yes, sir.

Mr. GAVIN. And naturally they assume that a certain punishment is going to be meted out because of the fact that he is there.

Mr. SMART. I think, Mr. Gavin, the only way to nail this thing down would be to provide that a reporter must be provided in every special case which the table of maximum punishments provides a bad-conduct discharge as a portion of the sentence. That would exclude all of the cases——

Mr. BROOKS. Suppose your trial officer admits beforehand that he does not want a bad-conduct-discharge sentence there; would you still take it down?

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Mr. SMART. He can so advise the court.

Mr. BROOKS. I mean in an ordinary civilian trial for murder down in my section the prosecuting attorney can get up and say, "Now, we are simply going to ask for manslaughter; we do not expect a murder conviction here." No defendant objects to that.

If that power was placed in the hands of the trial officer, would it take it away from command influence? That is the thing that concerns me.

Mr. SMART. I personally am not concerned about the point of command influence with this particular proportion, Mr. Chairman.

Mr. BROOKS. Well, are you concerned because of the fact of the reporter being absent might diminish the punishment as to the defendant?

Mr. SMART. Well, it certainly limits the punishment, because they cannot give a BCD.

Mr. PHILBIN. As to the cases where you are not giving a BCD, what constitutes the record on appeal for the consideration of the appellate court?

Mr. SMART. In the Navy they have a complete record. In the Air Force they have a narrative record.

Mr. PHILBIN. And that narrative record is made up by the court itself?

Mr. SMART. Usually it is the trial judge advocate. The prosecuting official makes a narrative of the testimony. That is, from the record which the reporter has taken, the trial judge advocate makes up one for the Air Force. In the Army the trial judge advocate has no reporter in a special court, and he makes up a narrative, and if there is any question that arises about the case there is no transcript of the proceedings which may then be transcribed and sent forward for review.

Mr. PHILBIN. Is there any opportunity at that point for the defendant or his representative to look over the narrative to see whether what was testified to squares with his view?

Mr. SMART. Yes.

Mr. DEGRAFFENRIED. The thing about it, Mr. Smart: If you just have it in narrative form when it goes up, then the reviewing authorities do not get the benefit of the objections which were made by the defendant's counsel and that those objections were overruled and that an exception was taken. So, all the testimony appears to be legal because there are no objections and no rulings on those objections there for the reviewing authorities to see.

When it goes up in narrative, you have the situation where there were no objections, and if there were no objections the testimony is entirely legal; whereas, if objections were made and they were overruled and an exception was taken, then the legality of that ruling is presented to the reviewing authority.

Mr. SMART. Correct.

Mr. DEGRAFFENRIED. Therefore, do you not think that in every important case—I cannot say in every felony case because they say that is not recognized in military law—it should be presented in what we call a bill of exceptions; that is, it should be presented in questions, objections, what the answer was and what the ruling of the court was, so they could rule on its legality?

And that would be less expensive than to have another one prepared after you already prepared it in narrative form—have the defendant's

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counsel raise some objection to it before the reviewing authorities and then have to prepare a new one setting it out in question-and-answer form.

Mr. SMART. There are many special-court cases where I do not think a reporter is necessary at all and we would be incurring, I think, some additional, unnecessary expense and go to a lot of trouble which is not necessary. But when you get around to this BCD provision—and I say to you that a BCD is almost as bad in practical effect as a dishonorable discharge to a man, regardless of how the armed forces characterize it—then I think you must be very careful about the way you handle these reporters and whether you have them or not.

Mr. BROOKS. Every defendant may be jeopardized, though, by making it possible even if the trial officer does not ask for a BCD to get a decree taking away his honorable discharge?

Mr. SMART. I would say there is much less likelihood of that happening, Mr. Brooks, because where your trial counsel—the prosecuting official—agrees that he thinks that a BCD is not an appropriate part of the sentence to be given, if he is the fair official that I think he should and would be——

Mr. BROOKS. Why would you take down that testimony, if he agrees there?

Mr. DEGRAFFENRIED. If he states there in advance, there would not be any necessity.

Mr. SMART. Then they can stipulate it and waive a reporter.

Mr. LARKIN. May I say in that case, his views may not be followed. It is the prerogative of the court to sentence.

Mr. BROOKS. And, if you insist on a reporter being there, it is going to give the man more punishment in some cases than he otherwise would get.

Mr. SMART. Mr. Chairman——

Mr. BROOKS. Yes.

Mr. SMART. I have no suggestions to the committee as to what they should or should not do about that matter. I did want to point out to you some of the possibilities in it for your consideration before you passed it.

Mr. RIVERS. Let me ask you this. Let us take the case of an officer. If he is tried before a special court and he is acquitted of the whole works, is there anything about that trial placed on his fitness report?

Mr. SMART. I cannot answer that, Mr. Rivers.

Mr. RIVERS. Who can?

Mr. SMART. Let me say this. Up unt ilthis time no Navy officer has ever been subject to trial by a special court.

Mr. RIVERS. How about an Army officer?

Mr. SMART. Up until the 1st of February 1949 no Air Force or Army officer was subject to trial by special court and I will bet this month's salary that none has been tried by special courts since the 1st of February. And I will bet furthermore that even though it is provided in the law, you are going to live a long time before you see any Army, Navy, or Air Force officers go to trial before a special court.

Mr. RIVERS. I think we ought to take cognizance of what could happen under this and make provision right here and now that in the event one is tried——

Mr. ELSTON. Mr. Chairman, if Mr. Rivers will yield.

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Mr. RIVERS. Yes, sir.

Mr. ELSTON. Would not the whole thing be solved by simply providing, as Mr. Smart suggests, that in case where a bad conduct discharge may be imposed as part of the sentence a reporter be provided?

Mr. DEGRAFFENRIED. Yes, sir.

Mr. BROOKS. Why not put it "unless waived by the court."

Mr. ELSTON. Let us find out how much of a burden it would be. If that situation should prevail. What do you say, Colonel Dinsmore?

Colonel DINSMORE. It would be a considerable burden, Mr. Elston. I do not have the figures, but——

Mr. ELSTON. How does it happen the Navy is able to do it?

Colonel DINSMORE. They have had authority to adjudge bad conduct discharges for a good long time and we have not.

Mr. ELSTON. Well——

Colonel DINSMORE. So we have no experience.

Mr. ELSTON. If the Navy is able to get reporters, why cannot the Army get them?

Colonel DINSMORE. We can.

Captain WOODS. Our reporters are all enlisted men.

Mr. GAVIN. Cannot hear you.

Captain WOODS. Our yeomen are reporters.

Mr. ELSTON. The Army have enlisted men for reporters?

Colonel DINSMORE. We do have some, not enough.

Mr. ELSTON. How about the WACs, are not there a number of WACs that are stenographers?

Colonel DINSMORE. I am quite sure that is true, Mr. Elston. My own experience does not go that far.

Mr. ELSTON. Of course every stenographer is not a reporter.

Colonel DINSMORE. That is right, sir.

Mr. ELSTON. But you do give the WACs some training and maybe it would be a good idea to give them some training as reporters.

Mr. RIVERS. That is right.

Mr. SMART. Mr. Chairman.

Mr. BROOKS. Mr. Smart.

Mr. SMART. As I said initially, I was reluctant to open this question up because it has taken so much time of the committee. May I suggest this to the committee: Having considered the matter, the three services are convinced they can live with this provision.

Now no doubt they have given it deep thought. I would say if they are convinced they can live with it let them try it and then if they get in trouble we are going to have to do something about it.

Mr. GAVIN. What you say interests me. If the reporter is there he is practically judged before the case goes to court.

Mr. ELSTON. Well, Mr. Gavin, that would not be true if you provided that a reporter had to be present in every case where a bad conduct discharge might be a part of the punishment.

Mr. DEGRAFFENRIED. That is right.

Mr. PHILBIN. You can get serious punishment for some of these other offenses, besides bad-conduct discharges. It seems to me we should try to find some protection for the individual accused in such cases.

Mr. RIVERS. Of course during the war there were a lot of miscarriages. I know plenty of cases in the Navy. I know of one which

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tands out in my mind. This boy was charged with something. They ut him inside of some kind of a hermetically sealed container where obody could get in touch with him. The only man who ever came o see him was a chaplain and the chaplain told him, among other hings, that they could send him to wherever they send them up there nd put them in jail—somewhere up north, in New England, wherever hey incarcerate them.

And it scared that boy so that he was delighted—it tickled him to leath—to plead guilty to whatever it was so they could very gener- usly and beneficially bestow upon him a bad-conduct discharge. t is just like you say. It is a very bad thing.

That boy hates to see his record, and to my knowledge he has never een home since he joined the Navy. And that bad-conduct discharge an carry the same implications to the boy who served as the dis- onorable discharge.

Mr. SMART. So far as that is concerned, Mr. Rivers, of course complete review is provided of that under existing law.

Mr. RIVERS. There was not any review of it, because the man pleaded guilty and so forth. I do not know how you can avoid it. But this bad-conduct discharge, where they can charge the man with the maximum and compromise on a lesser one, is a bad, bad practice.

Mr. PHILBIN. Do you feel, Mr. Smart, that a complete review is assured in these non-bad-conduct discharge cases under the provisions of this bill?

Mr. SMART. I think a sufficient review is accorded in cases where a bad-conduct discharge is not a portion of the sentence. I feel that way, Mr. Philbin. Heretofore the Navy has had all of its summary—the equivalent of a special in the Army—cases come to the Navy Judge Advocate General's Office, presumably for review.

That has not been true in the Army and the Air Force. They do not get to the Judge Advocate's Office for review. And I will say most of them should not.

Mr. GAVIN. There are thousands and thousands of those cases, though.

Mr. SMART. Oh, I will say there are thousands and thousands.

Mr. GAVIN. How many men sit and review these cases?

Mr. SMART. It depends upon what service you refer to, sir.

Mr. GAVIN. Well, any of them. How many cases would they lispose of? What I am trying to find out: How many there have been nd how many are disposed of and how many are yet to be reviewed?

Mr. SMART. Those figures will be presented to the committee in connection with another section of the bill, if you will withhold your question until that time, Mr. Gavin.

Mr. GAVIN. Well, in view of the fact that you have made it quite evident that the reporter being there prejudices the defendant's case, you either ought to have him there for all of their cases or not have him there for any of them.

Mr. ELSTON. Mr. Chairman, to bring the matter to a head I offer this amendment: On page 18, line 4, add the following sentence: "In any case where a bad-conduct discharge may be imposed a reporter shall be provided."

Mr. BROOKS. You have heard the suggested amendment. Is there any discussion on it? If there is not, we will call for a vote. All in favor of the amendment as suggested by Mr. Elston will make it

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known by saying "Aye." All opposed, "No." The "ayes" seem to have it. The "ayes" have it. The amendment is carried.

We approved that section once. We better reapprove it, though, as amended. As amended, is there any opposition to article 19?

Mr. RIVERS. That amendment comes at the end of the section there; is that right?

Mr. BROOKS. Yes.

Mr. ANDERSON. Line 4, page 18.

Mr. RIVERS. I see, there.

Mr. BROOKS. You are using the annotated copy.

Mr. RIVERS. I see.

Mr. BROOKS. Then that article stands approved as amended and we will turn to article 20.

Mr. SMART (reading):

ART. 20. Jurisdiction of summary courts-martial.

Subject to Article 17, summary courts-martial shall have jurisdiction to try persons subject to this Code except officers, warrant officers, cadets, aviation cadets, and midshipmen for any noncapital offense made punishable by this Code, but no person who objects thereto shall be brought to trial before a summary court-martial unless he has been permitted to refuse punishment under Article 15. Where such objection is made by the accused, trial shall be ordered by special or general court-martial, as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this Code except death, dismissal, dishonorable or bad-conduct discharge, confinement in excess of one month, hard labor without confinement in excess of forty-five days, restriction to certain specified limits in excess of two months, or forfeiture of pay in excess of two-thirds of one month's pay.

References: A. W. 14; Proposed A. G. N., articles 15, 16.

Commentary: This article is derived from A. W. 14. The right to refuse trial by summary court martial is made absolute, except for the case where the person has been permitted to refuse punishment under article 15.

Mr. BROOKS. Mr. Larkin, do you want to explain that?

Mr. LARKIN. Well, this provides the jurisdiction for the lowest court of the three: The one-man court. It is a court that can try enlisted men only. It is similar in its punishments to the present summary court of the Army and the deck court of the Navy. The one particular change insofar as the Army and Air Force are concerned is found in the provision that no person who objects to a summary court can be tried by that court unless he has previously had the opportunity of objecting to company punishment and did object.

The Navy practive at the present time is to afford the right to refuse this court, and the Army's has been not to except for the two or three noncommissioned grades.

Other than that, I think this follows a close pattern to what we have in all services.

Mr. BROOKS. You have heard the discussion. Is there any further discussion on this article?

Mr. GAVIN. Yes, Mr. Chairman, I would like to ask a question.

Mr. BROOKS. Mr. Gavin.

Mr. GAVIN. "Hard labor without confinement in excess of 45 days," what do you mean by hard labor?

Mr. LARKIN. Hard labor I think generally is construed to mean work while in confinement.

Mr. GAVIN. Well, what kind of work?

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Mr. LARKIN. What kind of work is performed usually, Colonel, do you know?

Colonel DINSMORE. Trimming lawns, picking up garbage, digging ditches maybe——

Mr. RIVERS. Captain of the head.

Colonel DINSMORE. Improving the roads around posts, general police work—just the ordinary run of housekeeping, Mr. Gavin.

Mr. GAVIN. What about this rock-pile business with a certain cadence; that is, a certain number of blows per minute, and so forth?

Colonel DINSMORE. Never heard of it, sir. I know as a matter of general information that that has been used by the civil authorities sometimes. I do not say that we have not done that. I know of no case where we have.

Mr. BROOKS. Any further questions? If not——

Mr. ELSTON. Just a minute, Mr. Chairman.

Mr. BROOKS. All right.

Mr. ELSTON. The way this is written any offense, provided it is noncapital, may be tried before a summary court?

Mr. LARKIN. But if it is, then the punishments which may be imposed are limited to these punishments set out here. So you can try a case by this court which by the table of maximum punishments calls for a certain sentence as a maximum, but this court could not impose that maximum or could not impose a sentence greater than the maximum set forth here even though the offense itself if tried by another court might call for or might provide that a heavier sentence could be imposed.

Mr. ELSTON. Of course that is all to the advantage of the accused.

Mr. LARKIN. Exactly.

Mr. ELSTON. And there may be a case even of murder——

Mr. LARKIN. That is right.

Mr. ELSTON. I will say homicide instead of murder because murder presupposes an intent to kill. But you might have a homicide case that is not very serious. It may have elements of accident in it, or misadventure, which they could try by summary court rather than general or special.

Mr. LARKIN. But if you convicted him you could not give him more than 1 month's confinement, you could not give him a DD or a BCD, and so forth.

Mr. ELSTON. So you would probably never have a case where an accused person would object.

Mr. LARKIN. That is right.

Mr. BROOKS. This is where command influence comes in favor of defendant, because the command selects the type of court.

Mr. LARLIN. That is right.

Mr. BROOKS. And if he selects this court, it will actually work to the advantage of the accused.

Mr. LARKIN. In that it limits the punishments, no matter what the offense, to these limited provisions here.

Mr. BROOKS. Well, is there any further discussion? Any question? If there is no objection to this article, it will stand adopted.

Mr. RIVERS. I made an observation awhile ago about an officer tried before one of these courts having competent jurisdiction of offenses on which he is charged. Now in the event he is acquitted,

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would that be noted on his fitness report and used whenever he is considered for promotion before a selection board?

Mr. LARKIN. I do not think so. But I could say this: The record of the trial and the acquittal is not expunged from departmental records.

Mr. RIVERS. Well that could be kept.

Mr. LARKIN. But I do not know specifically about the fitness.

Captain WOODS. It would have to be a matter of departmental regulation after enactment of the code, sir. I could use the analogy of the courts of inquiry.

Mr. RIVERS. I do not think a man ought to be tried in the star-chamber proceedings of a selection board.

Captain WOODS. There is no doubt in my mind that this would be made a matter of his personnel record.

Mr. RIVERS. Would it be out of order for us to consider that in this same document here at the proper place?

Mr. SMART. I doubt if it would be appropriate in this Code to legislate along those lines.

Mr. RIVERS. Where would you legislate it?

Mr. SMART. Well, as a practical matter, Mr. Rivers, I do not care what you write into the law, if the appropriate people in any department so desire, even though this officer has been acquitted, I can assure you that that will be considered by people in the selection board whether or not you have it in the law.

Mr. RIVERS. Only God Almighty with His infinite wisdom, omnipotence, and omnipresence knows what happens behind the closed doors of a selection board. I tell you that because I know whereof I speak.

Mr. PHILBIN. Does the record of an acquittal now appear on his fitness report?

Mr. SMART. The captain says it does not.

Mr. PHILBIN. It appears in other records.

Captain WOODS. Yes, sir.

Mr. LARKIN. That is right.

Mr. PHILBIN. But there is no notation on his fitness report.

Captain WOODS. No.

Mr. PHILBIN. So that would not be considered for promotion under present regulations.

Captain WOODS. That is right.

Mr. GAVIN. But that record is always available?

Captain WOODS. That is right. Administratively every record goes to the Bureau of Personnel and they make a notation on a particular court martial whether or not it constitutes a matter of interest in the particular officer's record. In acquittals they do not.

Mr. RIVERS. Of course if he had been disciplined somewhere down along the line that should be there.

Captain WOODS. That is right.

Mr. RIVERS. But where a court of competent jurisdiction has rendered him innocent, I think it should not be. It should be prohibited.

Captain WOODS. Administratively it is prohibited now, sir.

Mr. RIVERS. Well, it could be changed administratively.

Captain WOODS. It could. But for the same reasons that persuaded them for not doing it, they would continue.

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Mr. PHILBIN. Administratively, Captain, the fact that a man has been tried and acquitted is not taken into consideration by a promotion and selection board.

Captain WOODS. That is correct. There is no information before the selection board on that fact.

Mr. BROOKS. Now, let us proceed with article 21.

Mr. SMART (reading):

ART. 21. Jurisdiction of courts martial not exclusive.

The provisions of this Code conferring jurisdiction upon courts martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war may be tried by such military commissions, provost courts, or other military tribunals.

References: A. W. 15; proposed A. G. N., article 5 (f).

Commentary: The language of A. W. 15 has been preserved because it has been construed by the Supreme Court. (See *Ex Parte Quirin*, 317 U. S. 1 (1942).)

Mr. ELSTON. Mr. Chairman, might we have some explanation for the record of what is meant by "military commission, provost courts, or other military tribunals"?

Mr. BROOKS. You want to undertake that, Mr. Larkin?

Mr. LARKIN. Well, which part of it concerns you, Mr. Elston? Is it the "other military tribunals"?

Mr. ELSTON. No. I think for the record there ought to be an explanation of all that. "Such military commissions"—someone on the floor may want to know what a military commission is.

Mr. LARKIN. I believe a military commission may be defined as a tribunal which can be set up for the trial of persons who offend against the law of war.

Mr. ELSTON. Appointed by the President?

Mr. LARKIN. By the President. You have an example in that Sabateur case. That was a military commission.

A provost court is—what, Colonel Dinsmore? Is that a military government court or is it——

Colonel DINSMORE. It is an occupation court.

Mr. LARKIN. It is an occupation court; a court that may be set up by the occupation authorities within the area that they occupy.

There are other military tribunals. Are they occupation courts, too? What other kinds are there?

Colonel DINSMORE. Courts of inquiry.

Mr. ELSTON. Well, a court of inquiry does not have power to impose punishment, does it?

Mr. LARKIN. No. We have a provision in article 136 here for courts of inquiry, which cannot impose punishment or make a finding of guilty or not guilty.

Colonel DINSMORE. I suppose a Military government court is a military tribunal.

Mr. LARKIN. And that is a court that is similar, then, to the provost court; is that right?

Colonel DINSMORE. Yes; with greater jurisdiction.

Mr. ELSTON. I am wondering if we should not consider, then, a jeopardy provision, unless you have covered it in some later general jeopardy section?

Mr. LARKIN. We have a jeopardy section which I believe applies to this.

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Mr. RIVERS. That is right.

Mr. PHILBIN. Do you have a section that may relate to possible conflict between military and civil courts, such as we had at Hawaii during the war? Do you recall that particular incident?

Mr. LARKIN. That was a question of martial law rather than courts martial.

Mr. PHILBIN. That was martial law versus civil law.

Mr. LARKIN. That is right.

Mr. PHILBIN. Of course it would not be covered here.

Mr. LARKIN. That is right.

Mr. PHILBIN. It was not contemplated by this section.

Mr. LARKIN. That is right.

Mr. PHILBIN. Or anything in this code.

Mr. LARKIN. That is right.

Mr. ELSTON. I wanted to be certain that they cannot try a person before one of these other military commissions and perhaps get an acquittal of the accused and then have him tried by general, special, or a summary courts martial.

Mr. RIVERS. That is right.

Mr. LARKIN. I think that concern is a real one and I think the jeopardy provision does and should apply.

Mr. RIVERS. I think it covers it. I was looking over this provision.

Mr. LARKIN. That is right.

Mr. BROOKS. Is there any objection to article 21? If not, it stands approved.

Now on article 22—that covers an appointment and composition of courts martial—I would like so ask Mr. Smart this: Is it possible, Mr. Smart, to bypass this article and still proceed with a discussion and approval of the subsequent articles?

Mr. SMART. It is entirely possible, Mr. Chairman, if this article is highly controversial with the committee, that it can be passed until a later date and reconsidered at that time by the committee.

Now of course you will recall that this brings into focus the proposition as to whether or not the convening authority shall remain to be the so-called command or whether you are going to have command submit panels from which a judge-advocate officer or some superior command will select the court.

Now that is the one big question right here. If it is the sense of the committee that you want to adopt 22 as it is written and let the command continue to appoint courts, then you could dispose of the question at this time.

If on the converse there is a substantial feeling that you should adopt the panel idea, certainly I know that the Departments will want to be heard and I feel in all fairness should be heard.

Mr. BROOKS. Well, would we have to also bypass article 23?

Mr. RIVERS. Yes; the whole works.

Mr. SMART. I think not, sir—not on special and summary courts, because special courts do not involve a law officer, they do not require legally trained personnel as trial counsel and defense counsel, and in most of them they are not accorded the same complete review that general courts are. I think you could very well consider 23 and 24 completely apart from 22.

Mr. BROOKS. Well, what is the pleasure of the committee, then, in reference to bypassing the question of command influence for the

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present? We promised Mr. Anderson to have Professor Morgan back here.

Mr. ANDERSON. Mr. Chairman, I wanted to refer to that agreement which I understood we had when we started the reading of the bill by articles that we could return if we wanted to any article that is tentatively approved, to reconsider it or to hear Professor Morgan.

Now as I have indicated to Mr. Smart, I have a very comprehensive communication here from Professor Morgan which makes it unnecessary for me personally to require him to appear here as a witness again.

I understand he is coming down anyway. But in a matter that is as controversial as 22, I agree with Mr. Smart that if we are going to change the provisions of the bill as it is written the Departments are entitled to be heard if they so desire.

Mr. GAVIN. We said when we discussed these articles that all those who appeared before the committee be so notified, so they can be in attendance to make any suggestions they may care to offer.

Mr. RIVERS. Notify them so they can hear first-hand what way say about them behind their backs.

Mr. BROOKS. Well——

Mr. RIVERS. Let me ask Mr. Smart this. If we want to relieve the command of this burdensome obligation now imposed on them, would this be the place to do it?

Mr. SMART. This would be one of the places if you want to attack the proposition of command control. And I say I have no hesitancy in going on the record right now as subscribing to the ideas of General Riter and others. I do not think it would be appropriate to change this section.

I think there is a lot of wishful thinking being done about it. Many things have been suggested that are certainly fine from an ideal sense, and everybody who thinks about justice would hope that they would be done.

But so far as the services are concerned, I do not think they are practical, and I am perfectly willing to say so to this committee now.

Mr. RIVERS. Now in that connection, if we made a separate judge advocate set-up, would that cure the defect about which so many of us complain?

Mr. SMART. It would be helpful in my opinion, sir. I think the establishment of a Judge Advocate General's Corps, if that is the wish of the committee, for the Air Force and the Navy—the same as has already been done for the Army—could very well stand on its own feet and not be any part of the consideration of article 22.

Mr. RIVERS. Then it would minimize a lot of the criticism which is directed at command influence? Is that also your opinion?

Mr. SMART. It would certainly minimize the criticism. Whether it would cure the defect, that is something I can't say, sir.

Mr. ANDERSON. Is there anything in this code which sets up a separate Judge Advocate Corps?

Mr. LARKIN. No.

Mr. ANDERSON. Well, Mr. Chairman, perhaps the way to attack this thing, then, is to do it backward, by getting the sense of the committee first in connection with the possible establishment of a separate Judge Advocate Corps for all three of the services.

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Then if the committee indicates that it wishes to set up a separate Judge Advocate's Corps, go ahead with the consideration of article 22.

Mr. BROOKS. Well, the only difficulty there, would be this, it seems to me: I doubt that a separate Judge Advocate's Corps would be germane to this particular bill.

Mr. SMART. Only to this particular extent, Mr. Chairman——

Mr. BROOKS. And certainly—go ahead.

Mr. SMART. I am sorry to interrupt you, sir. It would make only this difference: In the Army you have a Judge Advocate's Corps, whereas in the Navy and Air Force you don't. So suppose you would pull out this appointing or convening authority from so-called command channels and give it to a judge advocate in the Air Force or the Navy. It is still in command. So you wouldn't have accomplished a single, solitary thing——

Mr. NORBLAD. It would be in separate command then.

Mr. SMART. Because they have no corps. They are officers of the line in the Navy and Air Force.

Mr. NORBLAD. If we set them up as separate, they will be separate.

Mr. SMART. Yes, sir; if you set them up as a separate corps.

Mr. RIVERS. That is what we are talking about.

Mr. SMART. But I say under existing conditions——

Mr. RIVERS. They are not going to exist like they are, if I have anything to do with this bill, when we finish this bill.

Mr. SMART. I will subscribe to what you say, Mr. Rivers.

Mr. RIVERS. If my vote has anything to do with it.

Mr. GAVIN. What was your observation again? Will you state that again?

Mr. SMART. As of today, Mr. Gavin, you have no Judge Advocate Corps in the Air Force or the Navy.

Mr. GAVIN. That is right.

Mr. SMART. So that if you gave, under article 22 here, the authority to convene courts to judge advocate officers——

Mr. GAVIN. With a special Judge Advocate Corps to be set up.

Mr. SMART. If you do that, then that casts a completely different light on it. But as of now you would have accomplished nothing as far as the Air Force and Navy is concerned.

Mr. GAVIN. We are trying to work that out.

Mr. RIVERS. I believe the reason Professor Mordan didn't bring up a recommendation for a separate Judge Advocate Corps is because if he had the bill would still be up there in the Departments.

Mr. LARKIN. It wasn't within the terms of our reference, in the first place, Mr. Rivers.

Mr. RIVERS. Sir?

Mr. LARKIN. The question of a corps was not within the terms of reference of the committee. The committee did not provide for a corps for the Air Force or Navy. Nor did they attempt to change in any way the corps heretofore provided for the Army.

Now, the question of a corps in the panel plan as recommended to the committee by a number of witnesses relates to article 22 to the extent that under that plan the appointment of the members of the court would be by the corps officers.

The appointment of the members of the court can be of course by the command even though you have a corps. That is illustrated by the fact——

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Mr. GAVIN. Not necessarily so.

Mr. LARKIN. Not necessarily so, but as a fact it can be and is.

Mr. GAVIN. As a fact it can, but it can't also.

Mr. LARKIN. That is right.

Mr. RIVERS. It may not, also.

Mr. LARKIN. But under the present provision in the Army, where you have a corps, the members of the court now, in the same fashion as article 22 provides, are appointed by the command. So while there may be a relation between the two, they can both exist separately.

Mr. RIVERS. I don't think we ought, right at this time, to constrict the command. But I do think that we should give some autonomy to the judge advocate set-up.

Mr. LARKIN. I think, as Mr. Smart says, if the sense of the committee is that they desire a corps for all services, that is one judgment to make. Then, secondly, you will follow through and determine, having a corps for all just as you have for the Army now, whether you want that corps and its members related to the appointment of the court members or not.

If you do not, that is if you have come to that conclusion, why it is perfectly appropriate to consider 22 right now. If, however, you desire in addition to a corps throughout and that the appointment be by corps members, then of course 22 will have to be changed completely.

Mr. RIVERS. That is right.

Mr. LARKIN. And that is a most important question of course. It is one that I think should be taken up in considerable detail. If you desire to take it up in that detail or if your conclusion already is that there should be corps and they should control appointment of members, then I would ask that the detailed discussion of this 22 be postponed until various Secretaries of the military come in and present their views to the committee.

Mr. ELSTON. Wouldn't it be appropriate to just pass all of part V until that time, because there are some other sections, too.

Mr. GAVIN. What does part V cover?

Mr. RIVERS. The whole works right there.

Mr. ELSTON. For example, article 26 might be related, where you refer to the law officer of a general courts martial and so forth. Why shouldn't the whole article just be passed until we decide that fundamental question.

Mr. PHILBIN. Yes.

Mr. RIVERS. Yes.

Mr. LARKIN. I think that is perfectly appropriate. You can take up phases of the rest of this. But to the extent that it concerns appointment of either court members, law officer, defense counsel, or otherwise, why——

Mr. GAVIN. Mr. Chairman, we will have to come back to it eventually. I suggest we go on, passing part V.

Mr. LARKIN. Your decision it seems to me ought to be based on your present state of mind on this whole subject.

Mr. BROOKS. There is no motion before the Chair, so in the absence of a motion and unless there is objection I am going to pass this article by and set the whole matter of taking up part V down for a special day and ask Mr. Smart, if he will, to notify all interested parties

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to be present and notify all the members of the committee with a special reference to the fact that we are going to take up this disputed point—setting it all down at one time.

Mr. ANDERSON. Mr. Chairman, may I offer a suggestion?

Mr. BROOKS. Surely.

Mr. ANDERSON. Not in the way of a motion. Mr. Larkin made quite an explanation there of what the committee is going to be confronted with if the committee decides to set up a special Judge Advocate Corps and whether or not the corps will select the officers for courts martial or whether that will be done by command.

Mr. LARKIN. Yes, sir.

Mr. ANDERSON. Now I would suggest, Mr. Chairman, that Mr. Smart and Mr. Larkin prepare for the committee, particularly for those of us who have no legal background, a brief in words of one syllable so we will understand what we are doing when we take this motion, this motion or this motion, because we are going to have to make up our mind as members of the committee and I would like to know just exactly what I am voting on when that time comes. That is just in the way of a suggestion.

Mr. BROOKS. I think your suggestion is excellent. I think the committee would like to have you gentlemen advise them in reference to a separate Judge Advocate Corps before the committee would want to pass judgment on that.

Mr. SMART. Mr. Chairman, I shall be glad to prepare a brief and in as nonlegal terms as possible.

Mr. HARDY. And make it as brief as possible.

Mr. SMART. Or I will be glad to discuss it with you personally if you should desire to do that, if you have time.

Mr. RIVERS. Why don't you do this—if Mr. Anderson will yield——

Mr. ANDERSON. I am through. I will yield the floor.

Mr. RIVERS. Why don't you explain the two plans separately, you and Mr. Larkin, and send it to all of us so whichever one appeals to us we can vote for.

Mr. SMART. It is my honest opinoin that that could be done here in a 3 or 4 minute conversation more satisfactorily than it can be done on paper.

Mr. BROOKS. Well, we will pass the part V by for the time being and move on to part VI, article 30. If you will read article 30, Mr. Smart.

Mr. SMART (reading):

ARTICLE 30. Charges and specifications.

(a) Charges and specifications shall be signed by a person subject to this Code under oath before an officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) that the same are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

References: A. W. 46a; A. G. N., article 43.

Commentary: This article should be read in conjunction with articles 31–35 which deal with procedures before trial.

Subdivision (a) is derived from A. W. 46a and is new for the Navy. Subdivision (b) requires disposition of the charges as soon as possible

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and provides for the notification of the accused. Article 98 makes it an offense to unnecessarily delay the disposition of a case

Mr. BROOKS. Any discussion on this article 30?

Mr. ANDERSON. This has to do primarily with the expeditious handling of these cases, which we discussed the other day in connection with article of war 1, as I recall it?

Mr. LARKIN. That, plus the formal beginning of the case.

Mr. DEGRAFFENRIED. Mr. Smart, do you like that word "practicable" there? What would you think about using the word "possible" there?

Mr. SMART. I think, Mr. deGraffenried, you would come out at the same place because there are other provisions in the bill which place a duty upon people to expedite these things. I think this wording, while it does seem a little lax, is satisfactory.

Mr. DEGRAFFENRIED. All right.

Mr. PHILBIN. Do you have other safeguards in the bill to require a man to be notified and in timely fashion of the charges against him?

Mr. SMART. That is correct, Mr. Philbin. Pretrial investigation, counsel at pretrial investigation and things of that character.

Mr. BROOKS. Someone, Mr. Smart, suggested during the course of the hearings that we add to subsection (b) a statement specifically stating that the accused shall be informed of the charges against him as soon as practicable and because of his constitutional right.

Mr. SMART. I don't remember that I raised that point, Mr. Chairman.

Mr. BROOKS. That is not the point exactly, but someone referred to it in the hearings. They thought they should state the reason for the information was because of the constitutional right.

Mr. SMART. That was Colonel Oliver, sir, in behalf of the Reserve Officers Association. But I think this section presupposes that, at any rate.

Mr. BROOKS. Any discussion on this?

Mr. GAVIN (reading):

Upon the preferring of the charges, the proper authority shall take immediate steps to determine what disposition should be made thereof—

and—

the person accused shall be informed of the charges against him as soon as practicable.

How long do you think that "practicable" is?

Mr. SMART. It happens pretty fast, Mr. Gavin.

Mr. GAVIN. Sometimes it doesn't happen so fast, too. They languish in a jail somewhere for a considerable length of time before they get around to it.

Mr. SMART. I agree with you, sir, that it has been abused.

Mr. GAVIN. Yes. I think, Mr. Chairman, some specified time ought to be in there, instead of leaving that open.

Mr. NORBLAD. There is a man that I defended during the war who was held for 2 weeks at another base before he was even returned to our base and charged.

Mr. RIVERS. Why don't you say "forthwith."

Mr. BROOKS. Or "immediately."

Mr. DEGRAFFENRIED. That is what I think. We ought to have "as soon as possible" or "forthwith" or "immediately" or something. That "practicable" is so broad.

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Mr. PHILBIN. What other safeguards do you have in this bill?

Mr. LARKIN. Well, in article 10, there is a provision that the committee has already considered which provides that immediate steps shall be taken to inform him, that is the accused, of the specific wrong——

Mr. BROOKS. The point was brought out there that you don't say immediately informed but you say that immediate steps shall be taken to inform him.

Mr. RIVERS. I move, Mr. Chairman, that "as soon as practicable" be deleted and "forthwith" be substituted therefor.

Mr. HARDY. How about "promptly"? Wouldn't that work just as well? It will phrase out a little bit better if you say "the person accused shall be promptly informed of the charges against him."

Mr. GAVIN. Well, it is all according as to how you interpret the word "promptly."

Mr. RIVERS. "Forthwith" is about as fast as you can let a man know.

Mr. BROOKS. It is pretty hard to justify not letting a defendant know what he is being held for when charges have been preferred.

Mr. LARKIN. Once again I draw your attention to article 98, which provides that it is an offense against this code——

Mr. GAVIN. Provides what?

Mr. LARKIN. That it is an offense against this code for any person to be responsible for unnecessary delay in the disposition of any case against an accused.

Mr. DEGRAFFENRIED. In other words, under the code as written there are other provisions there which require him to be informed forthwith.

Mr. LARKIN. I think so.

Mr. DEGRAFFENRIED. In other words, promptly or immediately. And if other provisions provide that, why not let this provision provide it and keep all of them alike.

Mr. PHILBIN. I don't think that is true.

Mr. ELSTON. Will the gentleman yield? You remember the other day on the floor we had an amendment on the rent control bill to strike out the words "wherever practicable" on the theory that it just gave the Rent Administrator authority to fix any time he saw fit. The same words might be objectionable here.

Mr. RIVERS. That is right.

Mr. ELSTON. So I think the suggestion that the word "forthwith" be put in there would be perhaps better than anything else.

Mr. GAVIN. The gentleman has so moved. Let us vote on it.

Mr. BROOKS. It has been moved that we vote on this motion. All in favor of the words "forthwith" indicated by my colleague to the right, Mr. Rivers, will say "aye." All opposed, "no." The amendment is carried.

Mr. LARKIN. Well, in view of that amendment, Mr. Chairman, may I suggest an additional amendment to cover this situation. Suppose you don't have the accused in custody? You know you can swear out charges without having the accused in custody.

The fact of the offense charged against him may come to the notice of the proper authorities. Witnesses or complainants or victims who allege they have been wronged in some way may come into the Military Establishment and complain.

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And based on their evidence formal charges and specifications may be drawn, whenever the signer of the charges has investigated and believes the accusations true. But you still may not at that time have the accused in custody. And suppose you don't have him for some time. Is he going to be able to claim you haven't forthwith informed him of the charges?

Mr. ELSTON. Well, wouldn't it follow as a matter of course that if he wasn't in custody he couldn't be notified? The Constitution guarantees to every person a speedy public trial and all that sort of thing.

Mr. LARKIN. Yes.

Mr. ELSTON. But if he isn't in custody he can't complain that he didn't get a speedy trial.

Mr. LARKIN. But upon the signing of these charges, he hasn't been informed of them promptly.

Mr. ELSTON. The law cannot contemplate the doing of an impossible thing.

Mr. LARKIN. Well——

Mr. ELSTON. And if they can't locate him they couldn't notify him. Wouldn't it be interpreted to mean they shall forthwith notify him whenever it is possible to notify him?

Mr. LARKIN. Well, that is the type of amendment I was going to add.

Mr. NORBLAD. "As soon as he shall be taken into custody" would take care of that.

Mr. LARKIN. That is my point. It is not practicable if you don't have them. If you have them, then it should be promptly or forthwith.

Mr. PHILBIN. So if you put in an amendment when he is in custody or is available, it would cover it.

Mr. LARKIN. That is the idea I had.

Mr. BROOKS. Would you want to draw up a suggestion?

Mr. LARKIN. I would like to if I may.

Mr. BROOKS. An additional amendment.

Mr. LARKIN. Yes, sir.

Mr. BROOKS. If you do that, we will take it up at the next meeting.

Mr. LARKIN. Very good, sir.

Mr. BROOKS. Now article 31.

Mr. SMART (reading).

ART. 31. Compulsory self-incrimination prohibited.

(a) No person subject to this Code shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this Code shall interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement at all regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court martial.

(c) No person subject to this Code shall compel any person to make a statement or produce evidence before or for use before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this Article or by any unlawful inducement shall be received in evidence against him in a trial by court martial.

References: A. W. 24; A. G. N. article 42 (c).

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Commentary: Subdivision (a) extends the privilege against self-incrimination to all persons under all circumstances. Under present Army and Navy provisions only persons who are witnesses are specifically granted the privilege. Subdivision (b) broadens the comparable provision in A. W. 24 to protect not only persons who are accused of an offense but also those who are suspected of one. Subdivision (c) is similar to A. W. 24 in that the privilege against self-degradation is granted to witnesses before a military tribunal and persons who make depositions for use before a military tribunal. It is made clear that this privilege cannot be invoked where the evidence is material to the issue—where it might be crucial in the determination of the guilt or innocence of an accused. Subdivision (d) makes statements or evidence obtained in violation of the first three subdivisions inadmissible only against the person from whom they were obtained. This conforms with the theory that the privilege against self-incrimination and self-degradation is a personal one.

The international violation of any of the provisions of this article constitutes an offense punishable under article 98.

It is unnecessary to provide in this article that the failure of an accused to testify does not create a presumption against him. See title 18, United States Code, section 3481.

Mr. RIVERS. Isn't that about the same way as it is in civil courts?

Mr. LARKIN. Well, it goes further than civil courts, and on the other hand it is changed a little bit from the provision in the Elston Act. I can point them both out quickly, I think. In the Elston Act there was an amendment offered on the floor, if you will recall, which provided that a witness need not answer a question which would tend to degrade him whether or not that answer or question was material to the issue.

Now that goes very much further than any civilian rule, which is normally that you may not be required to answer a question the answer to which would degrade you if it is immaterial to the issue.

But if it is material to the issue, why then you are not free to refuse. It all has to do with the question of a degrading answer or an answer which would tend to degrade you. That is my point.

We rephrased the language and protect a person from making a statement which would degrade him if it is immaterial to the issue. But if it is material to the issue then he must make the answer.

Mr. PHILBIN. Why don't you use the language "incriminate" there rather than "degrade"?

Mr. LARKIN. Well, incriminate is a different concept than degrade. We do use the language "incriminate" and provide the standard protection against incriminating statements.

Mr. PHILBIN. I was referring to this particular subsection (c).

Mr. LARKIN. Well, (b) covers incriminating, Mr. Philbin.

There are two other changes. In (a) we have provided, you will notice, that no person shall compel any person to incriminate himself or answer a question which might incriminate him. Heretofore, in the Articles of War and in last year's act, it was limited to witnesses.

In addition we have provided, as you see, that a person must be first informed in effect that anything he says can be used against him. That is not a requirement normally found in civil courts—this provision of informing a man in advance.

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Mr. BROOKS. Isn't it a requirement in the Federal courts?

Mr. LARKIN. I don't believe so. It is not in most State courts. But here we do provide that you must inform him in advance and if you don't, then anything he says is inadmissible as far as he is concerned.

Mr. ELSTON. Mr. Chairman, it would seem to me that subsection (c) goes farther than you need to go in any criminal case. Who is going to determine whether or not the statement is material? Every accused person could say, "I refuse to answer on the ground that my answer is not material to the prosecution."

Mr. LARKIN. I think the law officer does.

Mr. ELSTON. Well, statements may be made outside of the presence of a law officer. Suppose a man is arrested out in the field somewhere and he makes some statement, or even if he is before the law officer. He says, "My statement is not material."

The law officer says it is material. You have a dispute between the accused and the law officer. There is nothing in the code that indicates that the law officer is final authority.

Furthermore, as I understand criminal law, a person can at any time refuse to answer a statement on the ground that it would degrade him.

Mr. PHILBIN. That is right.

Mr. ELSTON. It is only when it will incriminate him. Every admission of crime is degrading. He could say "Well, I won't answer the question because it will tend to degrade me." Of course, if he answers it and it indicates his guilt, it would degrade him.

It would seem to be a complete loophole for anybody to get out of answering questions. It is only when it would tend to incriminate him. I don't think subsection (c) belongs in here at all. I think when the amendment was offered on the floor last year they confused the degrading feature with libel, in some offense where a statement is degrading and that is made the basis for the prosecution.

Mr. LARKIN. I think they confused on the floor the degrading statement in that they were trying to make it inadmissible whether or not it was material in all cases.

Mr. PHILBIN. Applied the same rule that you apply to incrimination; in other words, to degrade him?

Mr. LARKIN. Yes.

Mr. ELSTON. Well, isn't every inquiry material?

Mr. LARKIN. Not necessarily.

Mr. ELSTON. The best crimina investigator will take the least little thing and sometimes develop something from it. How are you going to pass on everyone of those questions and determine whether or not it is material?

Mr. LARKIN. In the investigation stage you certainly have difficulty.

Mr. ELSTON. Well, doesn't that apply in the investigation stage?

Mr. LARKIN. Yes; that is right, as well, of course, as on the trial. Now on the trial you may have a number of questions the answers to which would be degrading to the witness and still not be incriminating.

Mr. ELSTON. Well, when you get to the trial stage, of course it is much easier to pass on the question because at that time the charge has been made in writing, the accused knows what he has to face and so does his counsel, and you have a better opportunity to determine what is and what is not material.

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But in the investigation of a matter how can anybody say what is material, because you find out from your investigation what is material.

Mr. LARKIN. Yes.

Mr. ELSTON. You find out upon investigation what charge to make.

Mr. LARKIN. Yes.

Mr. ELSTON. If we got subsection (c) in here we might as well throw the whole thing out.

Mr. RIVERS. You are not wedded to that, are you, sir?

Mr. ELSTON. You are not wedded to that section, are you?

Mr. LARKIN. No. That is an added protection, that is all.

Mr. ELSTON. I think it gives too much protection. It enables the guilty person to escape.

Mr. LARKIN. Well, in the same way providing an obligation to inform him before he speaks is more than the usual protection.

Mr. BROOKS. You mean the constitutional provision?

Mr. LARKIN. So far as incrimination is concerned.

Mr. ELSTON. That is all right. That is up above.

Mr. LARKIN. That is right.

Mr. ELSTON. That is in subsection (b). That is perfectly all right. But any prosecuting attorney who was confronted with subsection (c) would have an awful time making out a case, and so would the Police Department. The FBI would have a terrible time.

Mr. LARKIN. Excuse me 1 second.

Mr. RIVERS. How do you feel about it?

Mr. DEGRAFFENRIED. My present opinion is that it would cripple the investigation.

Mr. LARKIN. May I point out in this connection, gentlemen, that this protection against making a degrading statement has been in the Articles of War for a long time, it was in the Elston Act and was modified on the floor in the way I described it, and I think applies to the court processes in tribunals rather than to the pretrial investigation because it does say here:

> No person subject to this Code shall compel any person to make a statement or produce evidence before or for use before a military tribunal.

If that is not clear, why we can clarify it and make sure that it is limited before some military tribunal of some character, courts martial or otherwise. But the notion of the protection against a degrading statement is not a new one.

Nor is it an innovation here. Now if it is not clear that it applies to when you are before a military tribunal, I think we should make it so. It would cause the difficulties Mr. Elston sets forth in an investigation.

Mr. ELSTON. If you confine it to a proceeding before a court and the accused could refuse to answer any question on the ground that it would degrade him, wouldn't you hamper the court in the prosecution of the case?

Mr. LARKIN. Except the court would force him to answer.

Mr. ELSTON. Well, his answer obviously would degrade him.

Mr. LARKIN. Yes.

Mr. ELSTON. But at the same time it might not be incriminating.

Mr. LARKIN. That is right.

Mr. ELSTON. And if he takes the stand of course and testifies why he opens the door and he can't complain.

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Mr. RIVERS. That is right.

Mr. LARKIN. But he shouldn't be degraded or forced to answer questions that degrade him that have nothing to do with this case.

Mr. PHILBIN. Doesn't this protection usually relate to both incrimination and degrading?

Mr. LARKIN. Yes.

Mr. PHILBIN. Isn't that the way it is used—conjunctively?

Mr. LARKIN. No; not conjunctively.

Mr. PHILBIN. They are used together, aren't they? Or are they used apart?

Mr. LARKIN. Yes, they are used separately. There is a connection at times. Certain answers will not only degrade but incriminate or the fact that you do incriminate in and of itself may be considered degrading. But there are a number of questions that can be asked a witness which are not material to the issue before the court the answer to which would degrade him but not incriminate him.

Mr. ELSTON. Isn't it the duty of the law officer to confine the evidence to competent, relevant, and material evidence?

Mr. LARKIN. That is right. And that is why this is a strengthening of his hand, so that he can protect the witness and not force him to answer a degrading question that is not material. But if it is material, why the witness should be forced to answer, even though it doesn't degrade.

Now the amendment on the floor would have excluded a degrading answer whether it was material or not. That goes too far because I think a person should be forced to answer a material question.

Mr. RIVERS. That is right.

Mr. LARKIN. Even though it is degrading.

Mr. RIVERS. That is right.

Mr. LARKIN. You might have the situation with a complainant—a girl in a rape case for instance—might refuse to state what happened on the theory that it degrades here. But it is material to the issue and she should be forced to tell the circumstances.

On the other hand, asking a witness a question which is wholly immaterial and the answer to which would degrade him should not be permitted. The witness should not be forced to answer it.

Mr. RIVERS. Of course, as Mr. Elston says, without putting it in there, the competent legal representative of the defendant could say it is not relevant and they would argue that out. If it is not relevant it is not relevant, whether it is degrading or not.

Mr. LARKIN. I think that is so. But I think this strengthens the hand of the law officer in that connection.

Mr. BROOKS. Mr. Larkin, let me ask you this question now. It is contemplated that this authority will be used in a hearing, is it?

Mr. LARKIN. Yes, sir.

Mr. BROOKS. It isn't restricted to a hearing, but outside of the hearing no one would be in the position to invoke the authority.

Mr. ELSTON. "Before or for use before any military tribunal."

Mr. LARKIN. I think that refers to depositions taken before, for use and so on. There may be an occasion where it may be necessary.

Mr. ELSTON. Now do you think it is necessary that we write into the law subsection (c) and stipulate that the accused may object to giving evidence which is not material to the issue when it is well settled that he may object to any evidence that is not competent, relevant, or material?

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If you are going to confine it to material evidence, then you better put in competent evidence, too, because evidence might be material but not be competent under the rules of law.

Mr. LARKIN. That is right.

The present article of war in this connection reads—and it is article 24—

> No witness before a military court, commission, court of inquiry or board, or before any officer conducting an investigation or before any officers, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry or board, or before an officer conducting an investigation, shall be compelled to incriminate himself or to answer any question, the answer to which may tend to incriminate him or to answer any question not material to the issue when such answer might tend to degrade him.

That as I say was continued in the Elston Act, but it was amended on the floor to say that he is not required to answer any question whether it is material or not to the issue when such answer might tend to degrade him.

Now we thought it was entirely appropriate to get away from that. That goes much too far. I think it was unintentional, frankly. I don't think that is intended, but unfortunately the amendment just has that meaning.

Mr. ELSTON. Of course the section you read is much clearer than this section because that makes it very plain that it is before some court.

Mr. LARKIN. That is right. But we adopted this format because we put in here as I mentioned the additional necessity of informing the man before you take a statement that insofar as incrimination is concerned it might be used against him.

In (a) we have just reiterated again the right not to incriminate himself.

(b) incidentally, covers a wider scope in that you can't force a man to incriminate himself beforehand—not just on the trial, if you will. And this in addition, since it prohibits any person trying to force a person accused or one suspected, would make it a crime for any officer or any person who tries to force a person to do that.

So not only do we retain the constitutional protections against self-incrimination and this evidentiary protection against degrading yourself unless it is material, but it goes further and provides that if anybody tries to force you to incriminate yourself then he has committed an offense. In providing for all those ideas we have different language.

Mr. BROOKS. Now, is there any further discussion, or what is the pleasure of the committee?

Mr. GAVIN. What is your suggestion, Mr. Elston? Do you have any definite suggestion on that?

Mr. ELSTON. Well, I don't think it is necessary. I think it is confusing.

Mr. BROOKS. Gentlemen, I don't think we are going to finish this article this morning. It is high noon. If there is no objection, we will adjourn.

Mr. RIVERS. We can't meet this afternoon, can we?

Mr. BROOKS. No; we can't meet this afternoon. We will meet tomorrow morning at 10 o'clock.

(Whereupon, at 12 o'clock, the subcommittee adjourned to reconvene on Thursday, March 24, 1949 at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

THURSDAY, MARCH 24, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will come to order.

Yesterday, gentlemen of the committee, when we recessed we were on article 31 and we were discussing that. It is proper, therefore, we begin with the same article and continue the discussion.

Mr. deGraffenried, I think you were speaking at that time.

Mr. DEGRAFFENRIED. I have forgotten what the question was, Mr. Chairman, and I withdraw it.

Mr. BROOKS. Well, are you satisfied with the article as written?

Mr. DEGRAFFENRIED. I don't know that I fully understand it, Mr. Chairman, but I have no specific objection to it.

Mr. BROOKS. Well, Mr. Elston indicated, however, that he would like to look it over further.

Mr. DEGRAFFENRIED. Yes, sir.

Mr. BROOKS. It seems to me we ought to either accept it as it is because historically it has been in the code so long or we ought to undertake to completely rewrite it.

Mr. DEGRAFFENRIED. Well, I have no objections to it. I don't feel that I am well enough acquainted with the particular matters discussed in this section to make any suggestions. And if it has been in here a long time and it has been satisfactory, I have no objection to it.

Mr. BROOKS. Mr. Larkin——

Mr. LARKIN. May I make a suggestion, Mr. Chairman.

Mr. BROOKS. Yes. We want to hear from Mr. Smart, too, before we pass on this article.

Mr. LARKIN. Yes.

In view of Mr. Elston's misgivings about subsection (c) you might reserve the decision of the committee on that article and if the rest of it is acceptable consider adopting the rest of it.

I say that for the reason that "c" is completely severable from the rest of the article and if it is the pleasure of the committee to drop "c" which has to do with the degrading type of statement as distinguished from the incriminating type, you could do so without doing violence to the principle of incrimination as contained in the other subsections.

For that reason you could pass "c" for the time being and if the committee adopts it, why it would stay as is. And if they feel that it is unnecessary or goes too far even though it has been in the present

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law, it wouldn't complicate the rest of the article at all because as I say it is severable.

Mr. BROOKS. Mr. Larkin, if you are going to start revising, subsection (b) says "An accused or a person suspected of an offense." Now, what does that mean?

Mr. LARKIN. Well, that is——

Mr. BROOKS. How would a person know he was suspected of an offense?

Mr. LARKIN. Well, after an offense has been committed a number of persons who are suspected might be brought in for questioning none of whom have been accused because the evidence is not complete enough to indicate who the perpetrator may be.

Mr. BROOKS. But you can't interrogate him without first informing him of the nature of the accusation.

Mr. LARKIN. That is right. You would have to tell him that the crime of larcency has been committed, for instance. You could say that this is an inquiry in connection with it and that you intend to ask him questions about it, but that he should be informed that he does not have to make any statement about it.

All that does is broaden the protection of self-incrimination so that whether a person is actually the accused and you attempt to interrogate him or whether you just don't know who the accused is and there are five or six people whom you suspect they are all protected.

Mr. BROOKS. Why have it in the nature of an accusation, though, unless there is an accusation?

Mr. DEGRAFFENRIED. As I understand it, Mr. Larkin, is this what you have on your mind: Say a crime is committed and several people are suspected but no one has been arrested.

Mr. LARKIN. Yes.

Mr. DEGRAFFENRIED. You bring them in before they have been arrested.

Mr. LARKIN. Yes.

Mr. DEGRAFFENRIED. You ask them to come in and you inform them of the crime that has been committed.

Mr. LARKIN. Yes, sir.

Mr. DEGRAFFENRIED. Say that somebody has been shot or something of that kind.

Mr. LARKIN. Yes.

Mr. DEGRAFFENRIED. You tell him that John Jones has been shot, that is tell each one of them that and tell them that they don't have to make any statement if they don't care to to incriminate them.

Mr. LARKIN. Yes.

Mr. DEGRAFFENRIED. Then you ask each one of them if they would object to making a statement about where they were at the time it was done so that an investigation may be made to find out if they are telling the truth about it.

Mr. LARKIN. Yes, sir.

Mr. DEGRAFFENRIED. Is that it?

Mr. LARKIN. That is exactly the idea, Mr. deGraffenried.

Mr. SMART. I can give you a specific example that happened to me personally, if I may, which was an interrogation by an Army Inspector General for a group of battery commanders, all of whom apparently had violated an order of the post commander. We were all taken before the Inspector General and advised of our rights under the

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Twenty-fourth Article of War, which this article perpetuates, and there were no charges or specifications. We weren't in jail.

They were just attempting to determine the facts. We were advised we didn't have to make any statement if we didn't want to because the Twenty-fourth Article of War protected us. I think that this contemplates the same type of an action.

Mr. BROOKS. I understand what it contemplates. The question is just the verbiage of it, whether or not you are really covering just about every important witness in every case, and also the question of whether or not you can inform the person the nature of an accusation when there is no accusation but merely an investigation.

Mr. LARKIN. Well, there may be no accusation against him. I think the sense of the word "accusation" is that someone, some witness or victim or complainant, has made complaint to the commanding officer who now calls in a number of people who are suspected.

Mr. BROOKS. Well, that is a problem there.

What is your suggestion, Mr. Elston?

Mr. ELSTON. Well, I wasn't here at the beginning of the discussion, Mr. Chairman, and I don't know that I can answer.

Mr. BROOKS. Mr. Smart, do you have any further suggestion?

Mr. SMART. I only have one, that is a general point to raise, and another specific point as to wording in subsection (b), Mr. Chairman.

Mr. BROOKS. Yes.

Mr. SMART. My general point is this: I think there is an adequate answer for it, but it ought to go into the record—you will notice that this particular article refers only to persons subject to this code, so that if a military person is apprehended by authorities other than military authorities they may likewise extract a statement from the accused or suspect which is in violation of the provisions of this article.

Now I think the record should clearly show that any statements obtained under those circumstances would likewise be inadmissible.

Mr. BROOKS. Well, of course if a suspect becomes a defendant and you haven't notified him beforehand of his constitutional guaranty of protection you can't use that testimony to prosecute him, as I understand the statute; isn't that true?

Mr. SMART. I think it is true; but I think that this record, that is, the legislative history, should clearly show that if a sheriff downtown picked up a boy suspecting that he is the person who committed an offense which the military authorities have announced has been committed, and he gets certain admissions out of that boy in violation of this article. I think the record here should clearly show that it is not intended that those statements will be admissible in a military trial of that accused.

Mr. LARKIN. I think that whole point ought to be——

Mr. BROOKS. Even though he never becomes a defendant, the fact that you obtained the statement when you suspect him of a crime would deny the court from using it; is that right?

Mr. LARKIN. I think there ought to be a distinction pointed out there, Mr. Chairman. In many State jurisdictions the local authorities have no obligation to inform a person suspected of an offense that any answers they make may be used against them.

I don't think if a confession is obtained by the civilian authorities that it should be inadmissible because the civilian authorities neglected to inform the man in advance of his rights.

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I do say this: If the civilian authorities extracted the confession from the man by any force, coercion or in any way that would make it an involuntary statement, then I think certainly it should not be admissible in evidence against him on a military trial.

But you would face this situation if you required the civilians—whom you can't require by this code—to inform a suspect in advance as provided in subsection (b): A man may voluntarily walk into the local civilian authorities or a police station and make a confession and they won't know what it is all about and not having any obligation to inform him or not seeing any reason to, why you would then not be able under the construction presented here to use such a statement or such a confession against the man. I think that would be——

Mr. SMART. That would be an admission against interest.

Mr. DEGRAFFENRIED. In a good many State courts you don't have to tell them in advance, in questioning them, what their rights are. Before that confession is admissible, you have to ask the witness whether he made any threats against the defendant or if there was any hope of reward or inducement to get him to make a statement and ask him if the statement was entirely voluntary.

If he says it was, then it is admissible in a great many civil courts, without going further and showing that he told him in advance what his rights were and all that. All you have to show is that it was voluntary.

Mr. LARKIN. In some civilian jurisdictions, as a matter of fact, you can trick a man into making a confession. As long as you don't coerce him and as long as the confession is voluntary it is admissible. We can't by the provisions of this code require civilian authorities to inform a suspect that anything he says may be used against him. It seems to me——

Mr. BROOKS. Of course, that is the same in (b) and (c). The point that I make—and I am not going to urge it further—is that you have two loosely written subsections, it seems to me, (b) and (c).

Well, I will abide by the will of the committee on whatever they want to do.

Mr. DEGRAFFENRIED. I still think (c) is probably more objectionable than (b).

Mr. BROOKS. I rather think so, too. It has been suggested we omit (c) and try to rewrite it so as to make it a little more in keeping with what the committee has in mind. With that change, that is with that exception, article 31 will be adopted as read.

Mr. SMART. I have one suggestion as to language in subsection (b), Mr. Chairman.

Mr. BROOKS. All right.

Mr. SMART. I merely question the use of the language in lines 6 and 7, "advising him that he does not have to make any statement at all." It just seems to me that there must be some better wording than that. You could say "he may refrain from making any statement," or words to that effect.

Mr. BROOKS. I fully agree with you on that.

Mr. ELSTON. I move that that change be made, Mr. Chairman. I think that would make it sound a little better.

Mr. BROOKS. You have heard the motion. Any objection? It is so ordered. The words "at all" are stricken from that subsection.

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Mr. ELSTON. Mr. Chairman, before we pass to the next section I would like to ask Mr. Larkin if there is anything in the regulations that requires a court martial or directs a court martial to follow the rules of evidence the same as they are followed in the civil courts?

Mr. LARKIN. The court-martial manual spells out a number of rules of evidence to be used before courts matrial, which incidentally were drafted in 1920, I think by Dean Wigmore. They are the rules of evidence under which courts martial operate.

If you are referring specifically to this self-incrimination point, why, I can refer you to the rule of evidence as applied and in connection with a specific provision which says "a confession not voluntarily made must be rejected," which I believe means not voluntarily made no matter to whom it is made: A civil authority, a person subject to military authority, or otherwise.

Mr. ELSTON. Well, of course you appreciate that only a meager part of the rules of evidence are statutory.

Mr. LARKIN. I do.

Mr. ELSTON. Most of the rules of evidence come from the common law and from decisions of the court over many years. In the civil courts, when you try a person for an offense, those rules apply.

You also have of course some statutes which specifically define your rules of evidence. Now what I am trying to find out is whether or not in a military trial the same rule applies.

Mr. LARKIN. We have provided in article 36, which reincorporates in general the rule set forth in article of war 38, that the manual, which is prescribed by the President—the procedures and the modes of proof—

shall as far as the President deems practicable apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

Mr. ELSTON. Well, I see I am just a little premature. We will come to that in a few minutes.

Mr. LARKIN. Yes, that is right, Mr. Elston. I think that covers the point you have in mind.

Mr. BROOKS. If there is no objection, then, article 31 is approved with the exception of subsection (c), which we will ask Mr. Smart and Mr. Larkin to work on and help us rephrase.

Article 32, Mr. Smart.

Mr. SMART (reading):

ART. 32. Investigation.

(a) No charge or specification shall be referred to a general court martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiries as to the truth of the matter set forth in the charges, form of charges, and the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and shall be permitted, upon his own request, to be represented at such investigation by civilian counsel if provided by him, or military counsel of his own selection if such counsel be reasonably available, or by counsel appointed by the officer exercising general court-martial jurisdiction over the command. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

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(c) If an investigation of the subject matter of an offense has been conducted prior to the time the accused is charged with the offense, and if the accused was present at such investigation and afforded the opportunities for representation, cross-examination and presentation prescribed in subdivision (b) of this Article, no further investigation of that charge is necessary under this Article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this Article shall be binding on all persons administering this Code, but failure to follow them in any case shall not constitute jurisdictional error.

References: A. W. 46b.

Commentary: This article is derived from A. W. 46b and is new to the Navy. Subdivision (c) is added to provide for a case where a court of inquiry or other investigation has been held wherein the accused was afforded the rights required by subdivision (b).

Subdivision (d) is added to prevent this article from being construed as jurisdictional in a habeas corpus proceeding. Failure to conduct an investigation required by this article would be grounds for reversal by a reviewing authority under the code and an intentional failure to do so would be an offense under article 98.

Mr. ELSTON. Mr. Chairman, first of all it seems to me that there is a slight change necessary in subsection (b). It says—

the accused shall be advised of the charges against him and shall be permitted * * * to be represented by counsel—

and so forth. It would seem to me that the accused should not only be advised of the charges against him but should be advised of his right to have counsel because many an accused person may not know that that is a right.

Mr. BROOKS. That was one of the objections made in the course of the hearings.

Is there any further discussion on that idea?

Mr. DEGRAFFENRIED. I think that is good.

Mr. NORRLAD. I am very much in favor of that, Mr. Chairman. In the cases I investigated, I don't think any of the accused knew they had the right to counsel. They were completely befuddled and mystified by what was going on, and there was no such requirement that I knew of or any other officer that I ran into knew being followed.

Mr. BROOKS. Do you phrase that in the form of a motion?

Mr. ELSTON. Yes. Mr. Chairman, to bring it formally before the committee I would offer this amendment: On page 29, line 4, after the word "him" add the following: "of his right to be represented by counsel."

Mr. ANDERSON. Put a comma in there after "him"?

Mr. SMART. May I make a suggestion, sir?

Mr. BROOKS. Sure.

Mr. SMART. I would suggest on page 29, line 4, after the word "and" delete the words "shall be permitted upon his own request" and substitute the words "of his right."

Mr. GAVIN. I don't think it should be "upon his own request." I think it shouldn't be necessary for him to request it. I think he should be advised. That would leave it upon his request. If he didn't make the request, why he won't be advised.

Mr. ELSTON. Well, doesn't that refer to his right to be represented by civilian counsel?

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Mr. SMART. No, sir.

Mr. ELSTON. Well let us see whether it does.

The accused shall be advised of the charges against him and shall be permitted, upon his own request, to be represented at such investigation by civilian counsel if provided by him, or military counsel of his own selection if such counsel be reasonably available, or by counsel appointed by the officer exercising general courts-martial jurisdiction.

It includes all three.

Mr. HARDY. If I may make a suggestion, I think you can clear the whole thing up if you said—

shall be advised of the charges against him and of his right to be represented by counsel.

Then start with a new sentence:

He shall be permitted upon his own request to be represented by civilian counsel—

and so forth.

Mr. BROOKS. Do you make that as a motion?

Mr. HARDY. I offer that as a substitute.

Mr. NORBLAD. Could I make a suggestion, that you add "at this investigation." It might otherwise be construed to tell him he could have counsel at a trial. That is what is intended. It is intended that he shall have counsel at this investigation.

Mr. HARDY. That is all right.

Mr. NORBLAD. I think that would clear it up a little bit better. Mr. Elston, do you have any objection to that?

Mr. ELSTON. No. I think the suggestions are both good to clarify the language. Wouldn't that take care of this, Mr. Smart?

Mr. SMART. May I ask Mr. Norblad: You see, in line 5 it says "to be represented at such investigation."

Mr. NORBLAD. I saw that, yes. But that is subsequent to that. I don't think it is going to do a bit of harm to add "at the investigation" and put it in a second time.

Mr. LARKIN. May I point out that the title says "Investigation."

Mr. NORBLAD. Yes. But still your officer who does the investigating is not normally a legal officer or lawyer. They will appoint most any officer to do that investigating and unless it is made eminently clear to him what it is supposed to do, he will just take this thing and go ahead and do exactly as he is told. Your investigating officer by and large is rarely a legal officer.

Mr. BROOKS. Is it your idea to put that at the end of the first sentence?

Mr. NORBLAD. Any place. Mr. Smart, I am sure, can do that to clear that up.

Mr. SMART. I think I know what you mean.

Mr. NORBLAD. "At such investigation and subsequent trial," or something of that nature, to be sure we have it covered.

Mr. BROOKS. You would put it at the end of the first sentence, which would read "the accused shall be advised of the charges against him"—is that the idea?

Mr. NORBLAD. And of his right to be represented by counsel.

Mr. BROOKS. Yes.

Mr. NORBLAD. At the investigation and at the trial.

Mr. BROOKS. At the investigation and at the trial?

Mr. NORBLAD. At any subsequent trial.

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Mr. ELSTON. Then following Mr. deGraffenried's suggestion, a new sentence:

He shall be permitted upon his own request to be represented at such investigation by civilian counsel, by military counsel, or by counsel appointed.

Mr. NORBLAD. Yes.

Mr. BROOKS. You have that all right?

Mr. LARKIN. Yes, sir.

Mr. BROOKS. Is there any objection to those amendments as indicated? If there is not, it will stand adopted, then.

Mr. ANDERSON. Mr. Chairman, on line 11, it says "if they are available." I am wondering just what effort is made to make the witnesses available? How far do the services go in making witnesses available?

Mr. LARKIN. You mean lawyers?

Mr. ANDERSON. It says that—

at such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available.

Mr. LARKIN. Oh. I beg your pardon.

Mr. ANDERSON. Now, to what extent do the services go to insure the fact that the witnesses will be available?

Mr. LARKIN. We have provided in another section which we will come to soon that there shall be equal opportunity to obtain witnesses by all parties. Heretofore the statute provided that the witnesses were to be obtained by the judge advocate and the defense requested their witnesses through him.

It is our contemplation that the trial counsel will be the specific administrative agent who will still obtain witnesses. But by providing that there is equal opportunity to obtain them, in the event that the defense feels his request has been unjustly overruled, then we contemplate that that request of the defense would be forwarded to the convening authority and he would have the discretion of obtaining the witnesses for the defense. But the principle enunciated is that there shall be equal opportunity.

Some accused occasionally insists that General Eisenhower or the President be called or some other request of that character is made which is inappropriate. You have to leave it to somebody's discretion of course and we have placed it in the convening authority.

Mr. ANDERSON. What I had in mind was the possibility that a witness that was called by the accused to be cross-examined might have prior to the investigation been transferred to another unit or another theater of operations. What effort will be made to make him available and what does available cover? How far away does he have to be or where he is to be available?

Mr. SMART. It is subsequently prescribed in article 49 (d) (1) that more than 100 miles may be construed as reasonable distance. It might very well be that circumstances would be such that it would be more than that, but I think that the general rule would be, Mr. Anderson, that if they would say that the prosecution may bring witnesses for a distance extending 100 miles, then that right would likewise apply to the accused.

Mr. ANDERSON. It would be equal.

Mr. SMART. And if they limited the prosecution to that distance, then that would limit the accused. And then his right to take depositions would intervene.

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Mr. NORBLAD. I think the one important factor to keep in mind on this is that this is not the trial. It is merely the preliminary investigation to satisfy the officer investigating that there is probable cause that the man did commit the crime and there is enough evidence to warrant that he should be put on trial.

They are not trying to decide whether he is guilty or innocent. So I don't think it is so important here as it is in the trial of the case to have the witnesses available.

Mr. LARKIN. What I said as applying here refers to the trial. I probably gave the wrong impression.

Mr. NORBLAD. Just like a hearing before a justice of the peace, to determine whether a man is being lawfully held or if there is enough evidence to try him.

Mr. SMART. A prima facie case.

Mr. NORBLAD. Yes.

Mr. LARKIN. This I should say goes further than you usually find in a proceeding in a civil court in that not only does it enable the investigating officer to determine whether there is probable cause, as you point out Mr. Norblad, but it is partially in nature of a discovery for the accused in that he is able to find out a good deal of the facts and circumstances which are alleged to have been committed which by and large is more than an accused in a civil case is entitled to.

But this (a) and (b) follow almost verbatim the present article of war 46, subsection (b), which I think as a matter of fact was considered by your committee last year.

Mr. ANDERSON. Mr. Larkin, let us take this hypothetical case: A man commits a crime in Germany. His unit is transferred out the following day. He is shipped to the United States. He may wind up at Fort Sill. The charge against him doesn't catch up with him until he is here. The witnesses are all still in Germany. Are they available or are they not available?

Mr. LARKIN. You are talking about both witnesses, I take it: Prosecution witnesses and defense witnesses?

Mr. ANDERSON. Right.

Mr. LARKIN. Well, they are available as soon as they can get them all here, I suppose.

Mr. ANDERSON. What would they do—subpena them or would they send each back here?

Mr. LARKIN. Well, it would depend on who the witnesses are. If they are subject to military control, why they can transfer them. If they are local nationals, why I don't believe they can.

Mr. ELSTON. You do provide for the taking of depositions.

Mr. LARKIN. We do.

Mr. GAVIN. They have brought them back. I was interested in a case where they brought a witness right back from Italy. He was located in Italy at that time. I think it was during the war. The witness was returned to the States.

Mr. LARKIN. I think whether they move either witnesses or the accused depends upon the circumstances.

Mr. NORBLAD. I think the whole difficulty, Mr. Anderson, is through your entire court-martial system. There is nothing you can do to correct it. As for instance during the war at the time the boat would sail somebody would be a. w. o. l. Well, he committed the crime at Camp Kilmer or Camp Dix.

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All the witnesses had been shipped to Europe, including the first sergeant who had the morning report and the man who had the bed next to him. It made it almost impossible to try the man because jurisdiction was here and the witnesses were in Europe. There was charge after charge dismissed. I know of a case in our own unit. I don't know how you can correct the thing.

Mr. LARKIN. That is right.

Mr. BROOKS. You won't contemplate, Mr. Larkin, would you, that in a preliminary examination such as this bringing the witnesses back to this country from Germany?

Mr. LARKIN. Well, you would have to if they are material witnesses because this preliminary investigation must be held before you can refer the case to a general court-martial.

Mr. BROOKS. But you merely have to establish prima facie cases, is that all?

Mr. LARKIN. That is right.

Mr. BROOKS. And if you can do it without bringing material witnesses back from Germany they won't be available in the sense that you refer to in this article.

Mr. LARKIN. That is right.

Mr. SMART. Not only that, Mr. Chairman, but for the purpose of investigation it could be referred through channels and an investigating officer could be appointed over in Germany to take the statements of witnesses and send them back here, without moving any personnel from where they were presently located.

Mr. HARDY. Then, in that case they are available to the prosecution but not the defense.

Mr. SMART. That is right. In that event they may very well want to send the accused. It would be much easier than bringing back a lot of witnesses.

Mr. BROOKS. Now, is there any further discussion on the Article?

Mr. ELSTON. Yes, I would like to ask for a little clarification on subsection (d), where you say that failure to follow the requirements of this article shall not constitute jurisdictional error. Why was that put in? I think the record ought to be clear on it.

Mr. LARKIN. I think that is right, Mr. Elston. There has been a considerable amount of difficulty in construing the binding nature of the pretrial investigation as provided, and that has been provided in the Army I guess since 1920. The Federal courts on writs of habeas corpus have scrutinized it and some have held that the absence or the failure to hold a pretrial investigation may be such jurisdictional error as requires a reversal of the verdict after trial. The point we are trying to make clear is that the pretrial investigation is a valuable proceeding but that it should not be a jurisdictional requirement.

It is a valuable proceeding for the defendant as well as for the Government. We desire that it be held all the time. But in the event that a pretrial investigation, less complete than is provided here, is held and thereafter at the trial full and complete evidence is presented which establishes beyond a reasonable doubt the guilt of the accused, there doesn't seem to be any reason when he has had his day in court and where it is clearly demonstrated that he is guilty, that despite that demonstration the case should be set aside if the lack of full compliance doesn't materially prejudice his substantial rights.

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In other words, this is an investigation for purposes of determining whether there is probable cause and it is an investigation to assist the accused. It is not the trial. His day in court is at the trial and if there is demonstrated at the trial that he is guilty beyond a reasonable doubt it seems that that verdict should stand and should not be disturbed unless the lack of a pretrial investigation or the fact that there has been less than full compliance has materially prejudiced his substantial rights.

Now if it has, that is and should be a grounds for reversal of a verdict of guilty. But by this article, we are trying to cure the interpretation that you require full compliance with it even though the lack of full compliance doesn't prejudice his rights when in truth and fact on the trial there is a full amount of competent evidence which demonstrates beyond a reasonable doubt the guilt.

That in our opinion was the construction and intention of Congress when they wrote it in and it seems to us clear from the legislative history. Strangely enough, one of the courts—I have forgotten which one of the circuit courts, that is the United States court of appeal—reading that legislative history, have come to just the opposite conclusion and have decided that the Congress intended it to be completely jurisdictional. It is analogous, I should say, to the indictment proceedings you find in a civil court.

Let us assume that you had less than full compliance before the grand jury but they indict nevertheless. Then the accused comes to trial and is convicted after the presentation of adequate, full and competent evidence. Then you would say that the conviction should be set aside even though the evidence on the trial is clearly sufficient to support the verdict because the indictment itself wasn't supportable.

There is that rule actually in New York State, or at least that construction has been placed. But it is an odd one and it is one that is not uniformly acceptable at all.

By virtue of this provision here in other words, if there was less than full compliance and that fact did not prejudice the substantial right of the accused and further there was ample evidence on the trial to sustain the verdict, then the lack of full compliance would not be such a jurisdictional defect as would result in setting aside the findings.

But, nevertheless, any authority in the military who does not hold a full pretrial investigation would be guilty of an offense. What we are trying to do here is require that it always be held.

Now if it isn't, the person responsible for holding it is guilty of an offense. But even though it isn't, if you prove on your trial thereafter a full case and the lack of full compliance hasn't materially prejudiced the substantial rights, then it does not become jurisdictional error.

Mr. ELSTON. Of course that is undoubtedly the way it ought to be.

Mr. LARKIN. Well, that is the way we feel it ought to be and we believe——

Mr. ELSTON. But the only thing that is bothering me is whether or not without some explanation of what this language means it might be interpreted to mean that the requirements of this section are directory and not mandatory.

Mr. LARKIN. It is our intention that they be mandatory on the military authorities who have the obligation to hold it, but that as I say a failure to hold it or less than full compliance which does not materially prejudice the substantial rights is not jurisdictional error.

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I agree with you entirely. I was going to volunteer this explanation if you hadn't asked it because it has been a chronic and difficult problem insofar as the military's relations with the Federal courts for the last several years.

Mr. BROOKS. Mr. Hardy.

Mr. LARKIN. Yes, sir.

Mr. HARDY. If an officer who fails to carry out the provisions of this section is guilty of an offense, how is it dealt with?

Mr. LARKIN. He can be court-martialed himself.

Mr. HARDY. Well, what would be the charge and what would be the penalty?

Mr. LARKIN. The charge would be under article 98 (2), which reads—

any person subject to this code who knowingly and intentionally fails to enforce or comply with any provision of this code—

this provision is that it shall be binding—

relating to the proceedings before, during or after trial—

this is before trial—

shall be punished as the court martial may direct.

That punishment would be set forth in the table of maximum punishments.

Mr. HARDY. That takes care of it.

Mr. SMART. One more objective of this article is to permit the court martial to take pleas of guilty which have not been preceded by a pretrial investigation. If you made this jurisdictional it would be necessary to conduct a pretrial investigation for every accused even though he wants to enter a plea of guilty.

Mr. ELSTON. Well, I think the matter will be taken care of if in the record it is clear that this section means just what you have stated. If any court later on is confronted with the question they necessarily go back or should go back to determine what the congressional intent was. But if it is in the record there won't be any question about it.

Mr. LARKIN. We certainly hope so, Mr. Elston.

Mr. ELSTON. Too many courts decide in their own mind what the congressional intent is and don't go back to the record to find out.

Mr. LARKIN. Well, we are surprised at the construction in the previous legislative history. We thought it was quite clear. Apparently the court did not. I hope what I said is clearer than the last time.

Mr. BROOKS. Well, Mr. Larkin, really the closest approach to what you have here is the hearing before a United States Commissioner, even more so than a hearing before a grand jury. There the procedure is similar to that set forth in these articles. Now I think it is fair and the record ought to show that Colonel Oliver of the Reserves felt like the requirements of subsection (d) which relate to jurisdictional error should be changed.

But the Federal rule is in accordance with the rule that we have discussed here.

Mr. LARKIN. I think most State rules are, too. The procedure of most States is as you know that there are hearings before committing magistrates. But on the other hand grand juries can and do indict right out of hand without a preliminary hearing at all.

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Mr. BROOKS. A grand jury, too, is secret whereas your commissioner hearings are open.

Mr. LARKIN. That is right.

Mr. BROOKS. The grand jury proceedings normally contemplate in civilian Federal courts that the defendants or the accused not be present normally.

Mr. LARKIN. That is right.

Mr. BROOKS. Whereas in your commissioner hearings it is the reverse and the accused is present.

Mr. LARKIN. That is right.

Mr. BROOKS. He is confronted with witnesses and has an opportunity to question them.

Mr. LARKIN. That is right.

Mr. BROOKS. And he must be advised that he is entitled to counsel and that his testimony may be used against him and that he gives it freely.

Mr. LARKIN. That is right.

Mr. BROOKS. Without hope of reward or fear of punishment.

Mr. Smart?

Mr. SMART. I have nothing.

Mr. NORBLAD. Mr. Chairman, in my opinion, I think the most important thing in connection with this section is that those matters you put in the record be spelled out in the Courts-Martial Manual, for this reason. I doubt that there is one-tenth of 1 percent of the court-martial cases that are ever appealed to a Federal court. Would you agree on that?

Mr. LARKIN. I think that is right, Mr. Norblad.

Mr. NORBLAD. And there is even a less proportion of the officers who are trying the cases or law officers who are familiar with the construction you have put on it and the one you said the Federal courts have put on it.

I raised that question once where there had been no preliminary hearing or preliminary investigation. Immediately the court and the law members went to the Courts-Martial Manual, which is the bible on the conduct of the cases and which interprets all this statutory legislation, and in there it is spelled out very plain that the failure to have this hearing shall not constitute jurisdictional error.

It is my wish and my request to the Judge Advocate Division—three of them are sitting in the room at the present time—that that be spelled out and put into the Courts-Martial Manual because that is where the law is actually made in the trial of the case.

It is not made in the Federal court—because none of the law officers or members of the court know what some Federal court in New York has decided. They will go to that Courts-Martial Manual, and for all intents and purposes that is where your decision is made.

Mr. LARKIN. I agree with you.

Mr. NORBLAD. That should be in the Courts-Martial Manual by all means.

Mr. LARKIN. I agree with you, Mr. Norblad, and we will make sure that it is.

Mr. NORBLAD. You won't write the Courts-Martial Manual, though.

Mr. LARKIN. I hope not.

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Mr. NORBLAD. No. The gentleman in the back of the room——

Mr. BROOKS. If there is no further discussion on that point——

Mr. GAVIN. Now we will take a case where the accused is found guilty and he feels that the preliminary investigation was not sufficient. Then he requests a reversal. He appeals for a reversal of that decision. Who takes it from then on?

Mr. LARKIN. Well, he might make the objection on the trial, actually. Then it would probably, after conviction, if it was made soon enough——

Mr. GAVIN. Assume he doesn't make it at the trial. What does he do?

Mr. LARKIN. Well, his counsel by provision here and in another article may write a brief on points of law that he thinks are erroneous. It would be considered by the staff judge advocate of the convening authority. It would be considered by the board of review.

Mr. NORBLAD. An officer would first do it.

Mr. LARKIN. Pardon?

Mr. NORBLAD. The commanding officer would be the first one.

Mr. LARKIN. That is right—well, the staff judge advocate and the commanding officer.

Mr. NORBLAD. Yes.

Mr. LARKIN. And then the board of review and in certain type of cases, as we will see when we discuss the appellate procedures outlined, the Judicial Council.

Mr. NORBLAD. Yes.

Mr. LARKIN. They would all have an opportunity to review.

Mr. GAVIN. Well, we can go through various steps from the command up to get reconsideration.

Mr. LARKIN. Yes, Mr. Gavin; that is correct.

Mr. DEGRAFFENRIED. Mr. Norblad, as to that suggestion you made just now, do you think it is advisable for you to make that in the form of a motion?

Mr. NORBLAD. I would like to make it in the form of a motion if I may. I think Mr. Larkin agrees that is the only way we will get a proper interpretation of this section.

Mr. BROOKS. Make a motion.

Mr. NORBLAD. I move that Mr. Larkin's interpretation of subsection (d) of article 32 on page 30 of the proposed bill, H. R. 2498, as it stands now be written substantially the same into the Courts-Martial Manual.

Mr. BROOKS. How is that interpretation worded, Mr. Larkin?

Mr. LARKIN. Well, it is quite long. I suggest that it be taken from the record. With your permission I would like to look over the language and make sure I have no split infinitives.

Mr. NORBLAD. I amend my motion accordingly.

Mr. BROOKS. If you mean to put that bill by reference we better have copies.

Mr. NORBLAD. No. Mr. Chairman, this is your bais for the law. Then they will write it up in the Courts-Martial Manual, which is so long and talks about rules of evidence and interpretations of sections and it goes on and construes what the Army thinks the Congress intended.

There is the book right there. It is a big thing. That is where it should be placed, the interpretation given by Mr. Larkin.

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Mr. BROOKS. You make the motion that this committee go on record as in favor or as suggesting that the interpretation of that provision be made in accordance with your provision?

Mr. LARKIN. I will transmit the resolution to the three Judge Advocate Generals.

Mr. NORBLAD. To be placed in the Courts-Martial Manual, which is the only bible that the officers sitting on the court go to decide court-martial cases.

Mr. BROOKS. You heard the motion. All in favor say "aye." Opposed, "no." The "ayes" have it and the motion is carried.

Mr. GAVIN. May I ask a question?

Mr. BROOKS. Surely.

Mr. GAVIN. Are all officers participating in these cases and trials, furnished each with a copy of these manuals?

Mr. SMART. Certainly.

Mr. LARKIN. Yes, Mr. Gavin, they all have the manuals.

Mr. GAVIN. There was a new one recently issued, wasn't there?

Mr. LARKIN. That is right. It was revised to take care of the provisions of the Elston Act as passed by the Congress last year. This is a copy of it.

Mr. NORBLAD. And misinterpreted the act and the intention of Congress in a couple of places.

Mr. BROOKS. Any further discussion on this article? If not, is there any objection to it? If there is no objection to the article as amended, then we approve it.

We will proceed to article 33.

Mr. ANDERSON. The House is in session.

Mr. BROOKS. In that case, gentlemen, we will adjourn to meet tomorrow morning at 10 o'clock.

(Whereupon, at 11:05 a. m., the subcommittee adjourned to reconvene on Friday, March 25, 1949, at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

FRIDAY, MARCH 25, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. L. Mendel Rivers presiding.

Mr. RIVERS. The committee will be in order.

Mr. Smart, I believe we had come to article 33.

Mr. SMART (reading):

ART. 33. Forwarding of charges.

When a person is held for trial by general court martial, the commanding officer shall, within 8 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If the same is not practicable, he shall report to such officer the reasons for delay.

References: A. W. 46c.

Commentary: This article is derived from A. W. 46c.

Mr. RIVERS. Is there any comment on that article?

Mr. LARKIN. I might say, Mr. Chairman, it is adopted from article of war 46c. It does not involve any changes and is a provision that has been in the law for some period of time.

Mr. RIVERS. The figure is just an arbitrary figure?

Mr. LARKIN. That is right.

Mr. RIVERS. Without objection, the article as read, is approved.

At this point, before we go any further, Captain Woods wants to correct the record. Captain, you may correct it in your own words. I think all that is necessary is for you to make a statement concerning it, for the record.

Captain WOODS. Upon inquiry from the Bureau of Personnel, in response to your question, as to whether acquittals were made part of the officer's record and considered by selection boards, I find that they are. Consequently, my testimony that they were not was incorrect and the record should be corrected to that effect, sir.

Mr. RIVERS. The record will be corrected as indicated. Colonel Dinsmore I believe had something he wanted to say.

Colonel DINSMORE. I was asked one day whether the National Guard, when they came into the Federal service, took a new oath and I promised to get the answer. I have been seeking a convenient opportunity to put that into the record and this may be a convenient time.

Mr. RIVERS. Yes.

Colonel DINSMORE. The officers of the federally recognized National Guard take two oaths at the time of Federal recognition, sir. This

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has nothing to do with being called into Federal service. One oath is to the United States and one to the State. Thereafter, when they are called in, no further oath is required. It is just like the oath that any of us takes. The enlisted men take only one oath, but it is a double oath, to the United States and to the State, and no additional oath is required from them.

As a matter of ceremony it sometimes happens that when they are called into the service, they have a big affair and everybody raises his hand and takes the oath, but that is just a patriotic gesture of no legal significance.

Mr. RIVERS. Then, whenever they are called to active service, they are just mobilized?

Colonel DINSMORE. That is correct, sir.

Mr. RIVERS. Mr. Smart, will you proceed to article 34.

Mr. SMART (reading):

ART. 34. Advice of staff judge advocate and reference for trial.

(a) Before directing the trial of any charge by general court matial, the convening authority shall refer it to his staff judge advocate or legal officer for consideration and advice. The convening authority shall not refer a charge to a general court martial for trial unless it has been found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

References: A. W. 47b; M. C. M., paragraph 34 (d)

Commentary: This article is derived from A. W. 47b. Subdivision (b) makes clear that in addition to formal corrections, changes in the charges may be made in order to make them conform to the evidence brought out in the investigation without requiring that new charges be drawn and sworn to. The Manual for Courts Martial provides that if an essentially different offense is charged as a result of the investigation, the convening authority should direct a new investigation to allow the accused to exercise his privileges with respect to new or different matter alleged.

Mr. BROOKS. Is there any discussion on this article?

Mr. ELSTON. I would like to ask a question or two about it. Does not that section practically leave it up to the staff judge advocate to say whether or not there is sufficient evidence to warrant the charge even being made?

Mr. LARKIN. It requires, Mr. Elston, that he review the findings of the investigation and advise the convening authority whether, in his opinion, there is sufficient evidence. It is left, however—that is, the decision is left to the convening authority, which is the present procedure.

Mr. ELSTON. Do you think the language "unless it has been found that the charge alleges an offense under this code and is warranted by evidence" pretty much makes the staff judge advocate the final judge?

Mr. LARKIN. No, I think not. If it does, it should not.

Mr. RIVERS. It certainly sound like it, to me.

Mr. LARKIN. The subject of the sentence is the convening authority, in the very beginning.

The convening authority shall not refer a charge to a general court martial * * *.

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Mr. SMART. Mr. Chairman, I think the words "unless it has been found" should be considered this way: The question arises from an interpretation. Do the words mean by the staff judge advocate or by the convening authority? My feeling about that is that in the first instance you should not make that choice hinge upon the staff judge advocate, but rather upon the convening authority, assuming that the command remains the convening authority.

Mr. ELSTON. That is exactly the point that I was making. The way it reads it would seem that it might be up to the staff judge advocate to make the decision; and I know that is not what you want.

Mr. LARKIN. That is right.

Mr. RIVERS. It should be rewritten; should it not?

Mr. ELSTON. I do not know; it certainly might be susceptible of a different interpretation.

Mr. LARKIN. I think so, unless the legislative history, or this discussion here is used as the guide. We might change "unless it" to "unless he."

Mr. ELSTON. Could you not have it read something like this: "unless he finds after being advised by the staff judge advocate that the charge alleges an offense" and so forth, so as to leave it to the command, the convening authority, to be the final judge?

Mr. LARKIN. Yes.

Mr. SMART. I think I can suggest an amendment which will do that for you, sir.

Mr. BROOKS. What is your suggestion, Mr. Smart?

Colonel DINSMORE. This was the subject of some discussion. Mr. Larkin and I talked about it briefly. I would like to have permission to give Mr. Smart the benefit of whatever that situation was at that time in connection with drawing the amendment.

Mr. SMART. May I ask Colonel Dinsmore this: It is your understanding, is it not, Colonel, that the choice as to whether or not charges and specifications will be referred to trial rests with the convening authority and not with the staff judge advocate?

Colonel DINSMORE. That is correct; that is so, indeed.

Mr. SMART. With that understanding I would suggest, on page 30 of the bill, line 21, that the word "he" be substituted for the word "it" and after the word "has" delete the word "been." So that the sentence would now read:

The convening authority shall not refer a charge to a general court martial for trial unless he has found that the charge alleges an offense under this code—

and so forth.

Mr. ELSTON. I think that takes care of it.

Mr. BROOKS. Are there any further suggestions?

Mr. RIVERS. I think we must keep in mind that all this comes under pretrial procedure.

Mr. SMART. Exactly.

Mr. GAVIN. Have there been any changes made in this article, Mr. Chairman?

Mr. BROOKS. Mr. Elston has suggested a change, which Mr. Smart put in certain language. The change is:

The convening authority shall not refer a charge to a general court martial for trial unless he has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

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Mr. GAVIN. The only question I wanted to raise was as to the term, "the convening authority." That refers to the staff judge advocate; does it not?

Mr. BROOKS. That was the purpose of this suggested amendment or change, to strike that out.

Mr. GAVIN. What are you putting in its place?

Mr. SMART. The change is on line 21, Mr. Gavin.

Mr. GAVIN. I see it in lines 18 and 20.

Mr. SMART. I think I understand the point you are raising, Mr. Gavin.

Mr. GAVIN. The point that I am making is that it still leaves it in the convening authority, leaves it in the command authority.

Mr. SMART. That comes back again to what you want to do about the convening authority. This does not say that the convening authority is command nor does it say that the convening authority is staff judge advocate. It merely says, whoever is the convening authority will approve the charges and specifications.

Mr. GAVIN. Going back to page 29, line 7, you state there:

by counsel appointed by the officer exercising general court-martial jurisdiction over the command.

Now you come along here and say:

officer exercising general court-martial jurisdiction.

Who is going to exercise this jurisdiction? The officer exercising general court-martial jurisdiction over the command. Here you come back and say, the officer exercising general court-martial jurisdiction.

Mr. SMART. You have two different problems. The first problem that you raised regarding counsel represents a completely different situation than the one as to who will refer the charges? The counsel provisions on page 29 say that the authority exercising general court-martial jurisdiction will appoint the counsel, but this article has nothing to do with counsel. This is the question, Who will refer the charges? This says the convening authority. The committee has not yet determined who will be the convening authority.

Mr. GAVIN. Is it the intention of the chairman to come back to articles 33 and 34 for discussion?

Mr. BROOKS. I do not think it will be necessary under that interpretation because when we decide who the convening authority is, that disposes of it.

Mr. RIVERS. It must be subject to the section that we passed over.

Mr. BROOKS. When we decide that, it may change the meaning of that particular section.

Mr. SMART. I might add that if you do change the intent of the provision of article 22, that it will be necessary to amend the bill in many places other than in article 22.

Mr. GAVIN. That is exactly what I am talking about.

Mr. BROOKS. That is the reason I thought that we should have started today to settle the point of command control. I think that I am not critical of anyone, because we are earnestly trying to do the best we can to write the best bill. After all, these matters refer to pretrial procedure and the vital thing in the bill is the trial—not the pretrail, it seems to me. We can spend weeks on this pretrial procedure without affecting a great many of the fundamental rights of the accused.

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Mr. ELSTON. We have only one more article before we take up trial procedure.

Mr. RIVERS. Was not the reason why the chairman passed it over, among other things, in order to give anyone who cared to testify further an opportunity to appear?

Mr. ELSTON. I do not believe trial procedure would be affected much by our subsequent decision about command authority, because it is more or less procedure that is already laid down by the code.

Mr. BROOKS. As to this pretrial matter, you have already decided that it is not a reversible error and so, regardless of what you put in here, if it is not carried through, it is not going to affect the fundamental rights of the accused a great deal.

Mr. RIVERS. If the commanding officer has some inkling that there is a violation in the articles of this code, he has got to be able to find it somewhere down the line here. But the ultimate result of the trial is another matter, as I see it.

Mr. BROOKS. Why not, since we have gone thus far in the pretrial procedure, try to go ahead and finish it?

Mr. LARKIN. I would like to point out one thing. Article 22 has to do with the appointment of members of the court. This article, 34, has to do with the referral of the charges by the convening authority which is a different concept and which is supported by the people who are criticizing 22; the witnesses who have said that they would like to see the appointment of court members by a judge advocate and not by the convening authority are the same people who say that they believe it perfectly appropriate for the convening authority to refer the charges. They do not criticize that part of the convening authority's function. So that you can decide 22 and the position of the command and convening authority insofar as the appointment of court members is concerned, without affecting 34 at all.

Mr. RIVERS. Of course, if he has control over the fitness reports of the members he appoints as a result of the charges, after having gone to trial, then there might be some difference and I think there is some difference.

Mr. LARKIN. It is a different concept.

Mr. RIVERS. But so far as referring the charges, I think it is entirely different, as you have observed.

Mr. LARKIN. That is right. I do not think any witness has recommended to you that there be any difference or any change.

Mr. GAVIN. I am sorry I was a few minutes late this morning. However, going back to article 33, to the matter of the officer exercising general court-martial jurisdiction, that would still leave it in command control; would it not?

Mr. RIVERS. He is referring to charges at that point. This is all pretrial.

Mr. BROOKS. Gentlemen, an amendment has been suggested. If there is no further question in reference to the amendment, then the question is on the amendment.

(The amendment was agreed to.)

Mr. BROOKS. Is there any further discussion with reference to article 34?

Mr. ELSTON. Just one other question. What corrections are contemplated in subsection (b)? What corrections could be made?

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Mr. LARKIN. It is contemplated that language changes could be made or, if the evidence adduced pretrial indicated that there was a technical variance between the specification and charge as written, and the evidence, that change could be made.

In other words, if the original allegation had been that the accused had stolen a black horse and it turned out in the investigation that it was a white horse, they could make language changes of that kind, which would be technical.

Mr. ELSTON. In other words, changes as to form, but not substance.

Mr. LARKIN. That is right. If it appears from the preinvestigation that the original charge and specification is not sustained or that the investigation has spelled out a different crime, then it will be necessary that the charges and specifications be redrawn and there be a new investigation on the different charge.

Mr. ELSTON. In other words, if a man is charged with being A. W. O. L., they could not change that to desertion?

Mr. SMART. That is a greater offense and a different offense, and I would say "no."

Mr. LARKIN. I think that is right.

Mr. BROOKS. Take the matter of grand larceny and petit larceny. Suppose the investigation shows the value of the article purloined was different from that originally claimed. Could a change be made either way there?

Mr. SMART. I would say that if it is a lesser and included offense—if he were initially charged with grand larceny but subsequently it was found out that the value of the merchandise taken would not substantiate grand larceny but would substantiate petit larceny, then the accused would not be prejudice by reducing the charges.

Mr. BROOKS. In the case of a more serious offense, such as murder, could a finding of a lesser offense be made?

Mr. LARKIN. I should say so; yes.

Mr. ELSTON. On a charge of manslaughter, you could not make it murder in the first degree.

Mr. SMART. You could not change it to a more severe crime, but I think you could make corrections to a lesser and included offense only.

Mr. RIVERS. Why not insert something in their along these lines, in favor of the one who is charged?

Mr. LARKIN. May I point out that we tried to spell out the idea in the commentary which says:

> Changes in the charges may be made in order to make them conform to the evidence brought out in the investigation without requiring that new charges be drawn and sworn to. The M. C. M. provides that if an essentially different offense is charged as a result of the investigation, the convening authority should direct a new investigation to allow the accused to exercised his privileges with respect to new or different matter alleged.

The purpose here is, because your charges and specifications are drawn after the receipt of the original complaint, when there is only a moderate amout of evidence, the next step is this pretrial investigation, which is a very much more extensive investigation and it may be that, as a result of that greater and more extensive investigation, some technical changes for the purposes of accuracy are necessary.

However, if the information adduced in the pretrial investigation is such that it warrants a different charge, then the new charge and

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specification must be drawn at that point and a new preinvestigation must be held, so that the accused can meet, if he desires, the new charge which he was not aware of during the first preinvestigation. That is the present practice, but we have inserted it here in the statute because in making this preinvestigation uniform, we were faced with this situation. The Navy at the present time does not have the same formal preinvestigation that the Army has. They do not have this formal investigation spelled out in this fashion. They make a preinvestigation which is substantially the same, but it has never been spelled out in a statute. Under the Navy practice, further, they do not draw the formal charges and specifications until after the preinvestigation.

In making it uniform and adopting the Army practice of statutory preinvestigations which are preceded by charges and specifications, we have provided this to insure that these technical changes can be made without sending it back to the original person who drew the charges in the first instance.

Mr. ELSTON. Let me ask you this question. You have your Army manual of court martial. After this proposed legislation is completed, if it becomes law, is there to be a uniform service manual?

Mr. LARKIN. There is; yes. At the present time, as you know, the Navy has a manual which is entitled "Navy Courts and Boards."

Mr. ELSTON. If the Navy is going to have one manual and place an interpretation on the law and the Army is going to have another and place another interpretation on it, there is going to be a lot of confusion.

Mr. LARKIN. That is right. That will not and cannot happen, Mr. Elston, because we have provided that the President will promulgate the rules for all, with one single manual. And there again, jumping away ahead of the story, the judicial council was provided, so that there is one final spot which will insure uniformity of interpretation.

Mr. BROOKS. That is one of the duties of the judicial council?

Mr. LARKIN. That is right.

Mr. BROOKS. There is an article somewhere here which says, in effect, that if a trial uncovers other offenses, nothing in the proceeding shall prevent the filing of separate charges as to these additional offenses discovered as a result of the trial. Is there anything in this article that will affect the subsequent article?

Mr. LARKIN. No; I think not. In that event, there would have to be a separate and distinct preinvestigation of the statutory charges.

Mr. DEGRAFFENRIED. If a man is charged with murder and the evidence discloses that he is guilty of, say, manslaughter only, would you have to make that change? In civil courts murder embraces all the charges; it embraces murder in the first degree, murder in the second degree, manslaughter in the first degree, and even manslaughter in the second degree. If the evidence discloses that he is guilty of a lesser crime than murder, would there have to be a change in the charges, or could he be found guilty of manslaughter?

Mr. LARKIN. I am quite sure that is possible here. We have provided in another article, article 59, that a lesser included offense may be found.

Mr. ELSTON. Do you have a definition anywhere of what is a lesser included offense?

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Mr. LARKIN. I do not think we have a definition set out, but it is set out in the commentary.

Mr. BROOKS. What article is that?

Mr. LARKIN. Fifty-nine. The commentary in that connection says:

Subdivision (b) is taken from A. W. 47 (f), 49 (a) and article 39 (d), (e) of the proposed A. G. N. M. C. M. paragraph 78 (c) defines a lesser included offense as follows: "The test as to whether an offense found is necessarily included in that charged is that it is included only if it is necessary in proving the offense charged to prove all the elements of the offense found."

That is quoted from the manual at the present time.

Mr. DEGRAFFENRIED. That is all right.

Mr. BROOKS. Is there any further discussion on this article? If not, article 34 will stand approved as amended, and we will take up article 35, Mr. Smart.

Mr. SMART (reading):

ART. 35. Service of charges.

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person shall, against his objection, be brought to trial before a general court martial within a period of 5 days subsequent to the service of the charges upon him, or before a special court martial within a period of 3 days subsequent to the service of the charges upon him.

References: A. W. 46 (c); A. G. N., article 43; proposed A. G. N., article 37.

Commentary: This article is derived from A. W. 46 (c) and is in accordance with present Navy practice. The period of 3 days between service of charges and trial by special court martial is derived from proposed A. G. N., article 37.

Mr. BROOKS. Is there any discussion on this article?

Mr. RIVERS. Would it be a great burden on the convening authority to serve the man with an information as to his rights? For instance, the accused does not have access to libraries, and so forth. They give him a copy of the charges, but is that sufficient?

Mr. SMART. I may say there that we must remember that counsel is mandatory for all these accused persons before a special court as well as before a general court. Certainly I believe we are safe in assuming that anyone appointed as defense counsel is going to know or inform himself of the rights of the accused.

Mr. RIVERS. Before the accused has the opportunity to plead guilty?

Mr. SMART. Absolutely; beyond any doubt in my mind.

Mr. RIVERS. My good friend on my right knows that a lot of times these solicitors try to get a man to take a lesser plea, in order to get the case off the docket. Frequently the dockets are cluttered up with so many cases.

Mr. BROOKS. The matter of the 5-day period was brought into question, Mr. Larkin. Do you see any necessity for a change there?

Mr. LARKIN. I do not think so, Mr. Chairman. It is a protection against a too speedy trial. That is the purpose of it.

Mr. ELSTON. In line 6 you refer to court-martial charges without indicating what kind of court-martial charges.

Mr. LARKIN. That is right. That refers to any of the three courts.

Mr. ELSTON. Even the summary; they are entitled to be served with a copy of the charges there?

Mr. LARKIN. That is right.

Mr. ELSTON. There is no limitation as to the time in which a summary offender can be brought to trial?

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Mr. LARKIN. That is right.

Mr. BROOKS. As long as we are discussing this more fully, what do u think of limiting that 5-day period to times of peace? Why ould it be limited to times of peace?

Mr. LARKIN. In times of war, the operational problems are such at we felt it inappropriate to tie it down to a time limit.

Mr. BROOKS. You think that that right should be suspended, and at a man should go to trial instanter?

Mr. LARKIN. I think so, although if he did and he could show that prejudiced his rights I think he would have a point of reversible ror. However, we hesitate to tie it down to a time limit in war.

Mr. ELSTON. Of course, most of the complaints arose during wartime id by reason of wartime prosecutions.

Mr. LARKIN. You see, this is subsequent to the service of charges or trial. By virtue of preceding articles which we have discussed, ou will recall that he is to be informed of the accusation or the charges gainst him as soon as he is incarcerated. Then follows the pre-nvestigation. In addition to having been informed upon incarcera-ion he is able to ascertain just what the charge is against him and ecome familiar with it. This provides an added protection in time f peace and gives some further opportunity to prepare a defense. t is not mandatory, you will observe; it is at the election of the accused himself. It comes into effect only if he objects to coming to trial sooner. If he does not object, it could be sooner.

Mr. BROOKS. Suppose it is a time of war and he is charged with something, conviction for which would take away his liberty for his whole life. Under this, if it is a special court martial, he is only entitled to 3 days.

Mr. LARKIN. That is, after the formal charges have been made.

Mr. RIVERS. A special court could not take away his liberty for that length of time.

Mr. LARKIN. That is right; only 6 months maximum.

Mr. ELSTON. In time of war, there could be a very speedy trial. They could prepare the charges and bring him to trial immediately, even though he objected. He could be brought to trial in a lesser period of 5 days or 3 days, if it is a special court martial?

Mr. LARKIN. That is right.

Mr. ELSTON. Of course, he may be deprived of his liberty. It might even be a death penalty. Do you not think he is just as much entitled to the same period of time during the war as during peacetime?

Mr. LARKIN. Well, in a death case, of course, such a penalty can be imposed only by a general court and that requires, of course, the whole preinvestigation procedure. I should say, as I pointed out before, that if the too speedy trial can be shown to have prejudiced his rights substantially, it will have been reversible error, anyhow.

Mr. ELSTON. If that rule prevailed, you would not need this 5-day and 3-day period?

Mr. LARKIN. Actually I do not think it would be needed, but it was spelled out for the sake of completeness and as a guide to inform him that within these periods he had the right to object. Perhaps some of the officers would care to comment on the matter of these periods.

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Captain WOODS. On board ship, in time of war, ordinarily you try to conduct these trials while you are in port. You simply do not have the manpower to do it properly at sea, because all of the officers are engaged at their war stations. You are rarely in port long enough to afford a period longer than 5 days, or to guarantee even that.

In my own experience, I was navigator of the *Nashville* in the Aleutians and we went into Kodiak to pick up stores. We were there 3 days. We had a case pending and that was the time that we had in which to do it.

Mr. RIVERS. Where did you conduct your trial?

Captain WOODS. In Kodiak, Alaska.

Mr. RIVERS. You convicted the man, and then what did you do with him?

Captain WOODS. He was transferred back to the States. Clemency powers were exerted back here and he was put on probation and then sent back to sea.

Mr. RIVERS. But you put him ashore at Kodiak?

Captain WOODS. Yes, sir. I have a couple of other thoughts I would like to present. If we are compelled to try him at sea, if we cannot handle him while we are in port, one of two things will result. The more mature officers will all be at battle posts and necessarily the trial will be conducted by the younger people, which I think might be unfortunate. The alternative would be to hold him without trial until the next time we hit port, which might be a very long period.

Mr. ELSTON. I think the captain's explanation in the record will be helpful to us in explaining to the Members of the House why this provision is perhaps necessary.

Mr. RIVERS. Of course, your difficulty is much greater than that of the Army.

Captain WOODS. I think so, sir.

Mr. BROOKS. If there is no further discussion on this article, it will stand adopted as read and you may proceed with article 36, Mr. Smart.

Mr. SMART (reading):

ART 36. President may prescribe rules.

(a) The procedure, including modes of proof, in cases before courts martial, courts of inquiry, military commissions, and other military tribunals may be prescribed by the President by regulations which shall, so far as he deems practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which shall not be contrary to or inconsistent with this code.

(b) All rules and regulations made in pursuance of this article shall be reported to the Congress.

References: A. W. 38; A. G. N. articles 34, 64 (e); proposed A. G. N., article 48.

Commentary: This article is derived from A. W. 38. Proposed A. G. N., article 48 is similar except that the Secretary of the Navy would be authorized to prescribe rules instead of the President.

I think that raises a question which Mr. Elston had a minute ago as to how this new manual was to be written. That is what is anticipated by article 36. I think it is anticipated, and I think it would be impossible to do otherwise, that the services will sit down to write a manual as a joint effort in the same manner as the services have sat down together to write this very bill.

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Mr. BROOKS. I think it would be unthinkable, after we go to all of this painstaking trouble to get a unified bill, that the President would prescribe three separate rules.

Mr. SMART. That is correct, Mr. Chairman. And when you provide such provisions as the jurisdictional features in here which provide for reciprocal jurisdiction, certainly the services must sit down and come to a very full and complete understanding and agreement as so how that is going to be exercised before it is submitted to the President for his approval. So I think it is impossible that they could write any manual except as a joint enterprise, and that one manual would be used by all three services.

Mr. ELSTON. It is not spelled out here that they have to do it. And I am not sure that we should not put it in here, that it is to be done, so that the President may not come along and provide some rules that would be applicable to one service and other rules that would be applicable to another service.

Mr. BROOKS. Furthermore, in paragraph (b) we do not specify the limit of time within which he has got to get that information to Congress.

Mr. RIVERS. As a result of this, neither the President nor any of the three services could have any authority to agree on any rules of procedure contrary to the discussion before this committee or the intent of the Congress?

Mr. LARKIN. I think that is provided, Mr. Rivers: "shall not be contrary to or inconsistent with this code." Further, of course, these rules and regulations are to be submitted to the Congress and the Congress will have an opportunity to scan them and see if they do not feel that they do conform.

Mr. ELSTON. But I do not see anywhere in here that there must be a uniform manual of courts martial. This, of course, is a uniform code in itself, but I am thinking about our making it mandatory that there be a uniform manual of courts martial.

Mr. SMART. I doubt that you should tie them with an amendment to where they could not even breathe; but I could offer some wording as an amendment to subsection (b) which would make the subsection read as follows:

> All rules and regulations made in pursuance to this article shall be reported to the Congress and shall be uniform insofar as practicable.

That leaves them enough leeway to provide a different provision where it is absolutely necessary and, there are some differences in the services, which is recognized. But it will show what the intent of Congress is, that it shall be uniform in every possible instance.

Mr. HARDY. With respect to all of the services?

Mr. SMART. Yes, sir.

Mr. ELSTON. I think that reaches it. Of course, there might be some slight differences that would pertain as to the Navy in contrast to the Army, but at least it is an expression of the congressional intent that we want it to be as uniform as possible.

Mr. RIVERS. That is right.

Mr. LARKIN. I certainly have no objection. It was our thinking that the manual could not be otherwise, under this section. But in order to clarify it further, the suggested language is appropriate.

Mr. BROOKS. Without objection, the amendment is agreed to.

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Mr. ELSTON. One other question, Mr. Chairman, and that is about the rules of evidence. I am referring to subsection (a) which says:

> The procedure, including modes of proof, in cases before courts martial, courts of inquiry, military commissions, and other military tribunals may be prescribed by the President by regulations which shall, so far as he deems practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, * * *

Can you give us any case in which the rules of evidence generally recognized in the United States district courts should not apply?

Mr. LARKIN. I think some of the provisions in the code now vary somewhat from the Federal law; in other words, double jeopardy.

Mr. ELSTON. That is a different thing. That is where you state it in the code and again you refer, in this code, to any provision which is inconsistent with the general rules of evidence. But what I am talking about is a rule made by the President, after we have enacted this code. Can you conceive of any case where he might by regulation change the rules of evidence as they generally apply in a criminal case?

Mr. LARKIN. No, I cannot think of one so far as a criminal case is concerned, at this minute. But I have not tried to make a comparison throughout.

Mr. RIVERS. Under this section why could not the President say, I do not deem it practicable that the generally accepted rules of evidence apply under this? The President might be a layman.

Mr. ELSTON. He could say that.

Mr. RIVERS. Surely.

Mr. SMART. As a matter of practice, of course, the President approves the rules of procedure and modes of proof which are recommended by the services.

Mr. RIVERS. Because he is Commander in Chief. And it is just perfunctory.

Mr. SMART. Of course, he merely signs his name to a recommended set of regulations which the services bring up to him. The experts work them up before they are presented.

Mr. RIVERS. Some Presidents do not have the advantage of legal experience.

Mr. ELSTON. He could say, for example, that hearsay evidence shall be admissible.

Mr. RIVERS. That is right.

Mr. ELSTON. May I ask the Army, the Navy, and the Air Force if they know of any case in which the rules of evidence generally applying in criminal cases could not be applied in the military trial.

Colonel DINSMORE. A striking example is the rule with reference to judicial notice, for example. We have a great body of orders and regulations, that sort of thing. I would have to ask for a little time to explore that, if I am going to give a complete answer.

Mr. BROOKS. Colonel, may I ask you, What about this rule against self-incrimination under article 31? It is different from what it is in ordinary civilian courts.

Colonel DINSMORE. That is correct.

Mr. BROOKS. Do you think that would make a difference in the rules that the President might promulgate?

Colonel DINSMORE. If Congress enacts this, he could use that language and it would make a difference.

Mr. ELSTON. The President is bound by this code?

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Colonel DINSMORE. I think so, yes, sir.

Mr. ELSTON. What we are complaining about is when you get outside of the code and he issues regulations saying what the rules of evidence shall be.

Colonel DINSMORE. Yes.

Mr. ELSTON. Those rules of evidence are the accused's protection. Those rules of evidence have grown up over a long period of time. Practically all the rules of evidence stem from the common law other than from statutes. If the President can just waive them by mere regulation it seems to me he is taking from the accused person in the military services a very fundamental right that every accused person has in the civil courts.

Colonel DINSMORE. I agree with you. We have followed all through these years the rules of the Federal courts. There may be a few exceptions. And I feel sure we could present a good reason for each one of those.

Mr. BROOKS. The Federal courts I think use the term "as near as may be" to state rules, which comes as close as you can come in the matter of language to being identical to the rules of evidence of another jurisdiction.

Mr. RIVERS. What kind of rules would obtain in the trial of a saboteur, such as those Germans, for instance, whom Kenneth Royall prosecuted? That was all secret. What kind of rules obtain there?

Mr. LARKIN. They are rules that are promulgated by the President, I believe.

Mr. RIVERS. Would that have any relationship to what we are considering? It would, would it not?

Mr. LARKIN. Yes; it would.

Mr. SMART. We are not prescribing rules of procedure for military commissions here. This only pertains to courts martial.

Mr. LARKIN. But we permit the President to provide for the rules in those tribunals.

Mr. RIVERS. They were tried by the Articles of War—those saboteurs. The present Secretary of War was the prosecutor, I believe.

Mr. SMART. He was the defender.

Mr. RIVERS. I knew he had some part in it. Of course, he had a lost case before he got started.

Mr. LARKIN. I think you may face this problem if you require that the regulations and principles of law and rules of evidence be followed that are generally recognized in the United States district courts. Every time a Federal court reconstrues a rule of evidence, construes in a different way, you will have the necessity of changing them for the court martial.

Mr. HARDY. Would not Mr. Brooks' suggestion take care of that "as near as may be"?

Mr. BROOKS. That is the verbiage that is used in the Federal courts.

Mr. HARDY. That seems to me more satisfactory than saying "so far as he deems practicable."

Mr. ELSTON. Those words, "so far as practicable," are in my opinion going to be rather dangerous in some statutes. We use that phraseology too much and it completely nullifies everything that you have laid down.

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Mr. LARKIN. Of course, this is not an innovation here. This is in the present statute and has been for a very long period of time, article of war 38 is the same. All we have done to it is we have added "principles of law." Heretofore it covered only rules of evidence. We have added "principles of law." But the phrase, "as far as he deems practicable" is in the present statute.

Mr. RIVERS. A lot of people have complained—and I think my colleague, Mr. Elston, will agree with me on this—that for a long time a great many of the books which we used to purchase for our libraries, as lawyers, have become useless because of a practice that has gained notoriety, under what is known as the Executive order, whereby Supreme Court decisions do not amount to very much at times. If you had access to the Federal Register or wherever they codify those things, you would not need your lawbooks. All you would need would be to get the latest communiqué and then go on about your business, if you had any business by that time.

Mr. LARKIN. It is perfectly true that Congress gives the President, under any number of laws, the right to regulate.

Colonel DINSMORE. I think I might be able to clarify the matter of Mr. Elston's mind if I read paragraph 124 of the Manual of Courts Martial.

The rules stated in this chapter are applicable before courts martial. So far as not otherwise prescribed in this manual, the rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States and when not inconsistent with such rules, the common law will be applied by courts martial. On interlocutory matters relating to the propriety of proceeding with the trial, as when a continuance is requested, the court may, in its discretion, relax the rules of evidence to the extent of receiving affidavits, certificates of military and civil officers, and other writings of similar apparent authenticity and reliability, such as the certificate of a physician as to the illness of a witness unless on objection to a particular right it is made to appear that the relaxation might injuriously affect the substantial rights of an accused or the interests of the Government.

Mr. ELSTON. You have stated a rule very fully there that goes much further in protecting an accused person than this does. If the first part of what Colonel Dinsmore read were inserted here, there would not be any doubt about it.

Mr. LARKIN. What Colonel Dinsmore read is a construction of this language as contained in article 38.

Mr. ELSTON. I understand that, but the President by some regulation could make it impossible to place that construction on it. The President, of course, does not himself make rules of evidence. What I think we want to get away from is somebody in the Secretary's office sitting down and writing the rules of evidence to govern the trials of courts-martial cases.

Mr. LARKIN. It is a question certainly, whether or not the services who, in the first instance, will draft the manual, will change their attitude from their present attitude, because when they drafted the construction of article 38 they set forth what Colonel Dinsmore has just read, which will be submitted to the President. Whether there is a danger that they are going to radically change that—I frankly do not think so, but that is the point you were addressing yourself to, I think.

Mr. BROOKS. You have heard the article, gentlemen. My own personal opinion is, if we make a change, we had better investigate

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the wording used in the Federal courts in the matter of the use of the rules of evidence of a State where they use the term "as near as may be." That is well covered by many a decision. I think this generally has been the law and it has worked very well and you have rules supporting it. So is there any necessity for a change? What is the opinion of the committee?

No amendments are offered.

Mr. RIVERS. Why not cut out "so far as he deems practicable"?

Mr. ELSTON. Those are the words that I object to. I would suggest, Mr. Chairman, that we pass this until the next meeting and in the meantime let us get the rule that the chairman is referring to and then have some further discussion on it.

Mr. BROOKS. We will take that up this afternoon. We are planning to meet this afternoon and tomorrow to try to finish up.

Mr. LARKIN. Mr. Chairman, may I inquire whether the striking out of those words would require us to use rules before the United States district courts in criminal cases which may not be applicable and see if I can uncover any tangible instance? If not, I am sure we would have no objection.

Mr. BROOKS. Could you be ready this afternoon?

Mr. LARKIN. I shall try to.

Mr. BROOKS. Then we will pass that by, and take it up later today. We will now take up article 37, Mr. Smart.

Mr. SMART (reading):

ART. 37. Unlawfully influencing action of Court.

No authority convening a general, special, or summary court martial, nor any other commanding officer, shall censure, reprimand, or admonish such court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this Code shall attempt to coerce or, by any unauthorized means, influence the action of a court martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

References: A. W. 88; proposed A. G. N., articles 9 (45), 39 (j).

Commentary: This article incorporates the provisions of A. W. 88. In addition it prohibits the convening authority from influencing the law officer or counsel. This is similar to the proposed A. G. N. except that the Secretary of the Navy would control such coercion by regulation.

This article is not intended to preclude a reviewing authority from making fair comment on errors of the court in an opinion which is made in the course of review, or from returning a record for revision of errors, or from taking appropriate action when a member of a court has so misbehaved as to abandon his judicial responsibilities or duties.

Article 98 of this code would make violations of this article an offense.

Mr. RIVERS. Where are the teeth?

Mr. LARKIN. Article 98.

Mr. SMART. Practically speaking, as has been previously pointed out to the committee, it is a matter of extreme doubt that anyone would ever be court-martialed under this section. You will recall that it was recommended, I think by General Riter who represented

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the American Legion, that this be made an indictable offense in the civil courts. I frankly do not subscribe to that position. I think it is going too far.

While I do not believe anyone is going to be court-martialed under article 37, I think it does say in good, plain strong, understandable language, what the intent of Congress is so far as influencing courts is concerned.

Mr. BROOKS. Mr. Smart, I was impressed with what Mr. Riter said. But thinking it over I was wondering, suppose an offense of this kind, coming under article 37, should be committed we would say in the Philippine Islands or in China, what would be the jurisdiction to try it, if it were assigned to a civilian court?

Mr. LARKIN. There would not be any, in my opinion.

Mr. BROOKS. You would have to go into the question of jurisdiction in all cases of that character, it seems to me.

Mr. SMART. That is right. You have some technical difficulties here in addition to the practical matters involved.

Mr. BROOKS. I think it is a very important article, though.

Mr. HARDY. I think it is very important. Insofar as article 98 applies to this, who would bring the charges under article 98 against anyone who violated this provision?

Mr. LARKIN. Anybody subject to the code could bring charges, Mr. Hardy. This is the language of Public Law 759. We have adopted it in toto except that we have added "law officer, or counsel thereof." In other words, censure, reprimand, or admonition of any member of the court is forbidden.

Mr. HARDY. Suppose the commanding officer raised the devil with somebody on the court for a decision that he made. That fellow would not dare bring charges under article 98.

Mr. SMART. I think that depends upon whom you mean by "that fellow." In the Army as of today I think the records will show that there are more Reserve officers on active duty than there are Regular officers. I cannot escape the feeling that if any action is ever taken under this article it will be initiated by some Reserve officer who was shocked and mad because of the action of some convening authority.

Mr. HARDY. A Regular Army officer would not do it.

Mr. SMART. I agree with you.

Mr. LARKIN. An enlisted man might be on the court.

Mr. HARDY. You do not have any idea that an enlisted man would do it, do you?

Mr. LARKIN. Well, I do not know.

Mr. HARDY. Not unless he wanted to get a dishonorable discharge very quickly.

Mr. RIVERS. What about the man who under the fitness report of the officer allegedly violates these provisions? Do you think he would do it?

Mr. LARKIN. I think if a man complains and charges are drawn and the commanding officer were acquitted, he would be in a very difficult spot so far as bringing sanctions against the man who made the charges is concerned.

Mr. GAVIN. What do you think would happen then?

Mr. LARKIN. I think the commanding officer, even if he were acquitted, would find it very embarrassing to bring sanctions against somebody who had complained because it might look that he was

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trying to wreak vengeance on the man. I think he would think twice about it, myself.

Mr. HARDY. Well, there are a lot of ways of skinning a cat, though.

Mr. SMART. I would say that I still believe, regardless what you write into the law, as was pointed out by Mr. Spiegelberg, any smart CO can get through this section here or through this article 50 different ways if he really wants to influence a court. And if there is a commanding officer of that character, he is going to do it in such a way that no one is ever going to know anything about it. And I feel that so far as the law is concerned and as far as the Congress can go effectively, all it can do is to express its opposition in good plain words, as here, to such practices. Practically, I do not believe you can go any further than that.

Mr. RIVERS. There are two ways of getting at it; one, leave these provisions as they are and make an absolutely separate JAG set-up; and that would be the nearest thing that would be foolproof that I know of. Then he can make all the trouble he wants. And the man who conducted the trial can always say, his stooge down below can say, "It was not my fault, it was the JAG's fault." It is just like these mayors from the various cities who attended the convention here in Washington just recently. They criticized the Congress for rent controls, because then they would not have anybody to pass the buck to. If you have somebody to whom you can pass the buck, that makes an ideal set-up.

Mr. BROOKS. What is the disposition of the committee?

Mr. GAVIN. I would suggest, Mr. Chairman, after line 23, have it read:

or the action of any appointing, convening, approving, or reviewing authority with respect to his judicial acts.

The convening or some other officer is going to do the appointing of the court rather than the commanding officer convening the court.

Mr. SMART. May I suggest that the words "appointing" and "convening" are used interchangeably and mean one and the same thing.

Mr. GAVIN. Then you would not have any objection to putting it in.

Mr. SMART. It is merely surplusage. I do not say that it hurts, but it does not help any.

Mr. LARKIN. Convening, as used here, is the broader term.

Mr. GAVIN. It comes back again to your other articles, 33 and 34, the convening authority. Who is going to convene this court? That is what I am particularly interested in.

Mr. RIVERS. I just got through making that observation a while ago.

Mr. GAVIN. You mean the Judge Advocate General set-up?

Mr. RIVERS. Yes. I think convening contemplates that personally.

Mr. BROOKS. Is there any further discussion of this article? If no amendments are offered and if there is no objection, the article will stand approved as read.

We shall take up article 38, Mr. Smart.

Mr. SMART (reading):

ART. 38. Duties of trial counsel and defense counsel.

(a) The trial counsel of a general or special court martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

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(b) The accused shall have the right to be represented in his defense before a general or special court martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel duly appointed pursuant to article 27. Should the accused have counsel of his own selection, the duly appointed defense counsel, and assistant defense counsel, if any, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he may deem appropriate.

but it does not help any.

Mr. LARKIN. Convening, as used here, is the broader term.

(d) An assistant trial counsel of a general court martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by article 27, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by article 27, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

References: A. W. 11, 17, 116; proposed A. G. N., articles 18 (b), 18 (c), 24 (b), 38.

Commentary: Subdivisions (a) and (b) are derived from A. W. 17 and A. W. 11.

Subdivision (c): A similar provision appearing in the proposed A. G. N., article 78, made it mandatory for defense counsel either to submit a brief of such matters as he felt should be considered on review or a statement setting forth his reasons for not so doing. This provision was not adopted because it was felt that if the latter alternative were chosen it might actually prejudice the accused on review. The permissive provision is inserted in the code to encourage defense counsel to submit briefs in appropriate cases.

Subdivisions (d) and (e) are derived from A. W. 116. Stricter requirements governing the circumstances under which assistant counsel may act independently of the trial counsel or defense counsel are imposed in order to maintain the quality of counsel and to protect the accused.

Mr. BROOKS. Do you have a comment on that, Mr. Smart?

Mr. SMART. I have not. It, substantially, perpetuates existing law. I think the article is well drawn and is entirely adequate.

Mr. BROOKS. How does it differ from the Elston bill?

Mr. LARKIN. I think only by addition. In (c) we provide the manner in which a defense counsel may write a brief, if he desires, and have it included in the record so that any legal points he cares to raise will be available for consideration upon review.

In addition, it provides in (d)—it tightens up the present regulations a little bit so that an assistant trial or defense counsel who may be sitting in on the case can conduct the case only if he is qualified in the same manner that the trial counsel himself is qualified.

In article 27 which we passed temporarily, the qualifications for trial counsel are set out, they briefly being that he either be a judge advocate, or a member of the Federal or State bar; and that in any event he be certified as to his ability by the Judge Advocate General.

We require here that any assistant who would take over be so qualified or, if he engages in part of the conduct of the trial and is not so

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qualified, he may do so only if the qualified trial counsel is present. That is a tightening up, as I say.

Other than that, this is an adoption of the present law. It is an adoption of parts of different articles, specifically Articles of War 117 and 116, and provisions that were in the proposed Navy bill.

Mr. ELSTON. I am wondering why, in section 27 we did not say, a member of the Federal court, the highest court of the State or the Territory? Suppose the prosecution were being conducted out in Hawaii? They have counsel who are admitted to practice out there who are very able and competent. And it would hardly be practicable to go to the United States to get counsel, whereas counsel there might be easily available.

Mr. LARKIN. Is not that a Federal court, Mr. Elston, in Hawaii?

Mr. SMART. I think it is. I think it is so construed.

Colonel DINSMORE. May I say something off the record?

Mr. BROOKS. Yes.

(Statement off the record.)

Mr. BROOKS. Is there any further discussion on this article, which is a rather important one? If not, it will stand adopted as read and we will proceed with article 39, Mr. Smart.

Mr. SMART (reading):

ART. 39. Sessions.

Whenever a general or special court martial is to deliberate or vote, only the members of the court shall be present. After a general court martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and such proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer shall be made a part of the record and be in the presence of the accused, the defense counsel, the trial counsel, and in general court-matrial cases, the law officer.

References: A. W. 8, 30; N. C. and B., sections 373, 402.

Commentary: This article expands the provisions of A. W. 30 to require the presence of all parties and the law officer except when the members of the court retire to vote or deliberate, or when the law officer is to record the findings. In the latter case, the reporter is to accompany the law officer and a verbatim transcript of the proceedings is to be kept. The article also prohibits the court from consulting with either the trial counsel, counsel for the accused, or the law officer in the absence of the others. The requirement of A. W. 8 that no evidence be received in the absence of the law officer is extended in that the law officer must be present at all times except when the members are to vote or deliberate. The law officer is not a "member" of the court and is not to be present during deliberations or voting. See article 26.

Mr. BROOKS. This is a disputed article, gentlemen.

Mr. SMART. Mr. Chairman, I might say that this article goes a good deal farther than existing law. In Navy proceedings there is no law member. In Army proceedings there is a law member who retires with the court to deliberate on findings and sentence.

You will recall that under this bill, the committee adopted the article which excludes the law member from retiring to deliberate upon the findings and sentence of the court. This goes further than existing law in that if the court has a question arise they will call in the law member, but they must also bring in the accused and bring in counsel both for the prosecution and the defense. So that there will

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be no more of this cloak-and-dagger session in the back room. Everything will be on the record. And from that standpoint it is a much improved article and I suggest its adoption.

Mr. RIVERS. In a general court you have got the law officer, because that contemplates the maximum which can be imposed and the reason it is left out for the other courts is obviously that they do not have that jurisdiction.

Mr. SMART. That is correct. They have an extremely limited jurisdiction compared to a general court martial.

Mr. RIVERS. They could not render a dishonorable discharge, any way.

Mr. SMART. I might interject here some figures to show that it would be utterly impracticable to attempt to furnish a law member for every special court. I think the most recent figures—and this is subject to correction by the representatives of any of the departments here—show that there are approximately 37,000 special court-martial cases a year in the Army; approximately 24,000 in the Navy, approximately 8,500 in the Air Force. If you had to supply a law officer for each, we would have to put the civilians out of business in order to get enough lawyers into the service to have law members in each of these cases. It just cannot be done, in my opinion, gentlemen.

Mr. RIVERS. Was not that observed some time ago by somebody? Did you not bring it up, Mr. Chairman?

Mr. BROOKS. Someone brought up the point as to whether or not the law officer should be allowed to sit in on the secret sessions.

Mr. RIVERS. I know we discussed that somewhere down the line.

Mr. LARKIN. Various witnesses who appeared before the committee recommended that a law officer continue to be a law member, a member of the court, and retire with it and deliberate with it and vote with it in the manner that they do under the Articles of War.

Mr. ELSTON. That comes in in another section, does it not?

Mr. SMART. Article 26.

Mr. LARKIN. That is in article 26, which we have not discussed. That is part of section 5, which we have delayed discussion on.

Mr. BROOKS. Are there any suggested changes or amendments, gentlemen?

Mr. HARDY. I have a question, Mr. Chairman. I am not quite clear on the first sentence. Does that mean that when a court begins its deliberations or operations to vote, it cannot call in a law member or counsel for any assistance that it might need?

Mr. LARKIN. No, it does not mean that.

Mr. HARDY. That is the way it reads, although the last sentence seems to say the opposite.

Mr. LARKIN. You have to read them both together.

Mr. HARDY. The only thing that bothers me is the intervening sentence which speaks of after the vote has been taken. I suppose it is just a question of construction there.

Mr. LARKIN. Under the language the following practice would be required. When a court retires to deliberate, only the members may be present for the deliberations. In the event that they desire further construction, further instruction, they may ask for it and in that case the law officer who is to give the further instruction may join the court but, of course, the accused, his counsel and the prosecutor also join

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the court and his further instructions are on the record. After he has given them, the court members themselves continue the deliberations outside the presence of the law officer, the accused and the prosecutor and then in the event the court has come to a conclusion and has voted on findings, if they desire technical assistance from the law member in drafting their findings, in the event, for instance, that they have found the accused guilty of a lesser included offense and they feel that they need technical assistance in casting that verdict into language, they may call him back again, with the reporter and ask him to assist them. Specifically he can come back for that purpose on the record. He can come back for further instructions, but he cannot be present during deliberations nor can he vote on the findings or the sentence.

Mr. HARDY. I am glad to get that explanation for the record, because the way it has been set up was confusing to me.

Mr. BROOKS. Whenever one is present, the others must be present following generally the practice of civilian criminal courts; is not that true?

Mr. LARKIN. That is correct. May I point out, the accused and the prosecutor do not have to be present for this technical legal drafting service, but the reporter does. But they must be present for any further instructions that are requested.

Mr. BROOKS. Let us put it this way. The defendant must be present prior to the reaching of a decision.

Mr. LARKIN. That is right.

Mr. BROOKS. Subsequent to arriving at the decision, the law member and the reporter may be present to frame the verdict.

Mr. LARKIN. That is right.

Mr. ELSTON. But it must go in the record.

Mr. LARKIN. That is right, it must go in the record.

Mr. BROOKS. You have heard the article read and discussed. If there is no further comment, it will stand adopted as read. We will proceed to article 40, Mr. Smart.

Mr. SMART (reading):

ART. 40. Continuances.

A court martial may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just.

References: A. W. 20; proposed A. G. N., article 37.

Commentary: This article follows the present Army and Navy provisions.

Mr. BROOKS. Is there any discussion on article 40? If not, it will stand adopted as read. Proceed with article 41, Mr. Smart.

Mr. SMART (reading):

ART. 41. Challenges.

(a) Members of a general or special court martial and the law officer of a general court martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and shall not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) The accused and trial counsel shall each be entitled to one peremptory challenge, but the law officer shall not be challenged except for cause.

References: A. W. 18; proposed A. G. N., articles 18, 24(b), 25.

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Commentary: This article adopts present Army and Navy provisions except that the Navy has not heretofore permitted a preemptory challenge.

Mr. ELSTON. I think there, Mr. Chairman, there was some thought on the part of someone who testified before us that this might be interpreted to mean that if several accused persons are tried together, there would be only one challenge.

Mr. SMART. One peremptory challenge, Mr. Elston.

Mr. ELSTON. Yes. Perhaps we could solve that and make it clear in subsection (b) by saying "each accused person".

Mr. LARKIN. You could, if that is what you desire to do. May I point out in connection with this question of peremptory challenges that we discovered a difference between Army and Navy practice. The Army has had a peremptory challenge, the Navy has not. This article represents a unification of previous diverse practices.

The Army provision that set up a peremptory challenge, however, gave the peremptory challenge to each side, so that if there was a joinder of accused, the accused joined in the challenge and it was not a challenge for each of the accused which, as a matter of fact, is I think more common civilian practice. If you try defendants jointly they all join in the challenged, they do not individually have a peremptory challenge.

Mr. DEGRAFFENRIED. If you try them in civil courts in a good many of the States, if you are trying more than one defendant, each defendant has the right to demand a severance and be tried separately. Do they have that right before a military tribunal, in a court martial?

Colonel DINSMORE. No, sir; you can ask for a severance, but it is discretionary.

Mr. LARKIN. It is discretionary in civil courts, too, I believe.

Mr. DEGRAFFENRIED. In our State it is mandatory.

Mr. ELSTON. You can readily see, where you have two or more persons who are tried together, and they may not ask for separate trials——

Mr. DEGRAFFENRIED. I should say, except in a conspiracy case, of course, they have to be tried together.

Mr. ELSTON. You can see, if two or more persons are tried together, and they do not have the right to ask for separate trials, there may be a considerable difference of opinion between them as to who should be challenged.

Mr. LARKIN. That is right.

Mr. ELSTON. One of them wants to challenge one member of the court and the other one says, "I do not want him challenged, I think he is all right, he is on my side." He wants to keep him. It seems to me the only fair way is to give each of the accused one challenge.

Mr. LARKIN. It should either be changed by saying "each of the accused" or reworded to say that in a general and special court each side should have a peremptory challenge.

Mr. ELSTON. If you say each side——

Mr. LARKIN. That gets back to the Army practice and the practice in a good many civil courts. If, in your State, a severance is not permitted, do the defendants join in the challenge or does each defendant have a separate challenge?

Mr. DEGRAFFENRIED. In our State, of course, in the State courts, we do not have challenges, we strike the jury. The defense has two

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strikes and the State has one. Of course, in the Federal courts, that is not true.

Mr. BROOKS. I would like to hear from the Navy on this, since this represents a complete change of the Navy rule.

Captain WOODS. It is quite satisfactory to us to have the peremptory challenge.

Mr. BROOKS. For each side?

Captain WOODS. No, sir; there I want to point out the practical difficulties involved. Again we have the situation where officers are engaged at their posts and it is sometimes very difficult to get a court together in the first instance. If you are going to allow challenges, you are reduced to a situation where an officer might have very important other work that he has to be doing at that time and could not be spared, but would have to be made available because of a challenge.

Mr. HARDY. He would not have to be available very long if he were challenged.

Captain WOODS. But the point is that he would have to be replaced by some other officer who was not selected in the first instance because of the importance of the duties that he was then engaged upon.

Mr. ELSTON. You could solve it by giving each of them separate trials.

Captain WOODS. Yes; that could be done, if it were desirable.

Mr. ELSTON. If you tried them together, how would it be fair to one defendant who was perfectly satisfied with the court to have someone else challenged as a member of the court?

Captain WOODS. That would be a difficulty that would have to be resolved between the defendants.

Mr. ELSTON. But they may not be able to reconcile their differences.

Captain WOODS. I think in a situation like that, where their interests were so adverse, they should ask for a separate trial and it probably would be granted.

Mr. ELSTON. But they have no assurance of that.

Captain WOODS. No. It is discretionary. I think ordinarily it would be granted, though.

Mr. BROOKS. How has the rule worked in the Navy, where they do not permit any challenges?

Captain WOODS. I think the answer to that is that the Navy does permit challenge for cause.

Mr. BROOKS. I mean peremptory challenges.

Captain WOODS. I think the answer is that we have been very generous in challenging for cause. If there is any reason at all to accept the challenge, it is sustained.

Mr. BROOKS. Thank you very much. What about the Army, Colonel?

Colonel DINSMORE. We have had this since 1920. We have not had it before. There has been no question, so far as I know, and I think I am rather familiar with the history of courts martial during that period; and I would like to point out this to the committee. I would not for a moment wish to be understood as in favor of depriving any accused of any substantial right which is necessary to protect his interests. If you give each accused a challenge, a peremptory challenge, it seems to me that you may be injuring the rights of some of them. Mr. Elston cited the case in which one of the accused is satisfied with the court and he wants all the members to sit; and the

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other accused does not. Well, they cannot get together. If you give each of them a challenge, the No. 2 man exercises his option and then you have done something that is injurious to the interest of the first man.

There is another thing that I would anticipate.

Mr. BROOKS. Let me see if I understand you. The No. 1 defendant is satisfied with the court and he passes. The No. 2 man feels that by using his right peremptorily to challenge a member of the court, he would be protecting himself, but you think he might be injuring the No. 1 man.

Colonel DINSMORE. No. 1 is deprived of the full court which he wanted.

Mr. ELSTON. Yes, but when they call the new member of the court, if he is not satisfied with that member, not having exercised his challenge, he may then exercise it.

Colonel DINSMORE. That is correct; he could, yes.

Mr. ELSTON. And he has had his challenge.

Mr. HARDY. But you come up against the situation that you mentioned a while ago. One of the accused feels that the court may be favorable to him and he does not want any member of the court taken off. If you will permit the other defendant a peremptory challenge, he may challenge the very individual that the first man wants to remain on the court.

Mr. ELSTON. Of course, it works both ways.

Colonel DINSMORE. I think also it will probably tend to create a situation where all these fellows are impelled to get rid of a lot of people just because they have the right without any very strong reason.

Mr. DEGRAFFENRIED. Do I understand that you believe that if there is more than one defendant being tried, just the side ought to have one challenge?

Colonel DINSMORE. That is my personal opinion. I do not know that the Army has any strong views on it one way or the other.

Mr. ELSTON. Suppose you have two defendants and each have counsel of their own and they cannot agree about which one of the court should be challenged?

Colonel DINSMORE. That is right. You can have that situation.

Mr. BROOKS. Would it create any hardship if we gave each one a peremptory challenge?

Colonel DINSMORE. It would be a question of having members available for the court.

Mr. ELSTON. But if they did not have the men available they can always raise them by giving them separate trials.

Colonel DINSMORE. That is right, sir.

Mr. BROOKS. What is the view of the Air Force on this?

Major ALYEA. The Air Force agrees with the Army in the matter of the one peremptory challenge in common trials.

Mr. BROOKS. Do you believe it would be a hardship to give one challenge to each defendant?

Major ALYEA. In common trials we do it now.

Mr. RIVERS. Does it work a hardship?

Major ALYEA. I have not seen that it does.

Mr. ELSTON. On page 35, line 10, insert before the word "the" the words "each of"; and then strike out in the same line the word

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"each" which follows the word "shall". I offer that suggestion. It would read:

Each of the accused and trial counsel shall be entitled to one peremptory challenge, but the law officer shall not be challenged except for cause.

Mr. BROOKS. You strike out the second "each"?

Mr. ELSTON. Yes.

Mr. BROOKS. You have heard the motion; if there is no objection, the motion will be agreed to.

(There was no objection.)

Mr. BROOKS. Is there further discussion on article 41? If not, 41 will be approved as read and amended. We will take up article 42.

Mr. SMART (reading):

ART. 42. Oaths.

(a) The law officer, all interpreters, and, in general and special courts martial, the members, the trial counsel, assistant trial counsel, the defense counsel, assistant defense counsel, and the reporter shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(b) All witnesses before courts martial shall be examined on oath or affirmation.

References: A. W. 19; A. G. N. articles 28, 40, 41; proposed A. G. N. articles 19, 25.

Commentary: This article requires that officials and clerical assistants of general and special courts martial be sworn. The oaths are not specified in the code as it is felt that the language of the oaths is suitable matter for regulations.

The article does not require the court to be resworn in every case. The language would allow a court to be sworn once a day where there is to be more than one trial, if the accused in each trial is present at the time that the court is initially sworn.

Mr. BROOKS. Gentlemen, I think at this time the subcommittee will have to adjourn, and we shall do so until 3 o'clock this afternoon or tomorrow morning. I have been informed that it is possible the House will have adjourned by that time.

(Whereupon the committee adjourned to reconvene at 10 a. m. Saturday, March 26, 1949.)

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UNIFORM CODE OF MILITARY JUSTICE

SATURDAY, MARCH 26, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The subcommittee met, pursuant to adjournment, at 10 a. m., room 304, House Office Building, Hon. Overton Brooks (chairman of the subcommittee), presiding.

Mr. BROOKS. The subcommittee will please come to order.

Mr. SMART. Mr. Chairman, may I make an inquiry?

Mr. BROOKS. Before we do that, let the record show that when we recessed yesterday we did so with the idea of taking up one controversial matter; and that was the changing of the words in article 36 (a).

Mr. SMART. I think, Mr. Chairman, that Mr. Larkin has sufficient information available now to prove the wisdom of retaining the section as it is written rather than changing it.

Mr. LARKIN. I think so. Our brief inquiry seems to us conclusive on the matter; but I wonder if I might make this suggestion: Mr. Elston, I think, is particularly concerned. Subject to your decision, should we wait?

Mr. BROOKS. Let us let it go over.

Mr. LARKIN. I think he would be interested in hearing some of the information.

Mr. BROOKS. We will let it go over until later on this morning.

Mr. SMART (reading):

ART. 43. Statute of limitations.

(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this Article, a person charged with desertion in time of peace or any of the offenses punishable under Articles 119 through 132 inclusive shall not be liable to be tried by court martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this Article, a person charged with any offense shall not be liable to be tried by court martial or punished under Article 15 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under Article 15.

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this Article.

(e) In the case of any offense the trial of which in time of war is certified to the President by the Secretary of the Department to be detrimental to the prose-

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cution of the war or inimical to the national security, the period of limitation prescribed in this Article shall be extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not; or

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

References: A. W. 39; proposed A. G. N., article 5 (b); title 18, United States Code, section 3287 (1948), (wartime suspension of limitations).

Commentary: Subdivision (a): Adopted from A. W. 39 and proposed A. G. N., article 5 (b). "Aiding the enemy" is added to the list of offenses which may be tried and punished at any time.

Subdivision (b): Adopted from A. W. 39. The time when the period of limitation will stop running is changed from the time of arraignment to the time sworn charges and specifications are received by an officer exercising summary court-martial jurisdiction over the command. This provision is considered preferable to the more indefinite provision in A. W. 39 that the statute is tolled when "by reason of some manifest impediment the accused shall not have been amenable to military justice."

Subdivision (c): This covers all other offenses. The period of limitation is made applicable to trials by court-martial and to punishment by a commanding officer.

Subdivision (d): The language used in the second proviso of A. W. 39 is changed because of its indefiniteness. The clause "in the custody of civil authorities" and "in the hands of the enemy" are adopted from Navy proposals.

Subdivision (e): Adopted from A. W. 39.

Subdivision (f): Incorporates the provision in title 18, United States Code section 3287, which otherwise might not be applicable to court-martial cases.

Mr. DEGRAFFENRIED. Are there many changes in those sections from the existing?

Mr. LARKIN. There are some, Mr. deGraffenried. I might point them out quickly if we follow the subdivisions.

Mr. BROOKS. Might I take up subdivision (a) first, and then we can tentatively approve it?

Mr. LARKIN. Very good. Subdivision (a) is the same as the existing law with the exception that we have added the offense "aiding the enemy" as a type of offense that should not have any statute at all, by virtue of its extreme seriousness. It is an offense which carries a death penalty, and in our minds it is of equal seriousness with murder, mutiny, and desertion in time of war.

Mr. BROOKS. Let me ask you this question: What has been the definition of the offense "aiding the enemy"?

Mr. LARKIN. In answer to your question, Mr. Chairman, the offense of "aiding the enemy" is set forth in article 104 of the code, which reads:

Any person who—

"(1) aids, or attempts to aid the enemy with arms, ammunition, supplies, money, or other thing; or

"(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with, or holds any intercourse with the enemy, either directly or indirectly; shall suffer death or such other punishment as a court-martial or military commission may direct."

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Mr. BROOKS. So wih reference to this particular crime article 104 limits the crime to these spcifications.

Mr. LARKIN. Exactly.

Mr. BROOKS. Otherwise it would seem to me that it would be a rather embracing crime.

Mr. LARKIN. No. It is limited definitely by article 104 which is titled "Aiding the Enemy."

Mr. RIVERS. Let me ask you this: Does that mean that for general courts martial there is no statute of limitations?

Mr. LARKIN. This is a statute throughout, Mr. Rivers.

Mr. RIVERS. It is 3 years. There is no statute of limitations for mutiny and murder?

Mr. LARKIN. Yes, but you said by general court martial only. The statute covers offenses not connected with the type of court.

Mr. RIVERS. I mean, for anything the subject of a summary or special court the statute runs against that?

Mr. LARKIN. No, sir. The statute is tied to the offense, regardless of where it is tried.

Mr. RIVERS. Regardless of which court?

Mr. LARKIN. Yes.

Mr. RIVERS. I see.

Mr. ELSTON. I was just wondering if this was not the section in which we should make some provision about the statute continuing to run, notwithstanding a person's separation from the service, so as to take care of that Supreme Court case which recently decided, wherein it was held that if a person had been separated from the service, even though he had reenlisted, the military authorities had no jurisdiction to try him.

Mr. LARKIN. I think, Mr. Elston, that was not by virtue of a statute of limitations. That was by virtue of the discharge.

Mr. ELSTON. I understand. We have not as yet put it in here.

Mr. LARKIN. The committee has not as yet decided upon the wording of section 3 (a). The wording, I should say, would definitely contain a provision which makes it subject to this article. In other words, I should say it would start out "subject to the provisions of article 43" and then go on with whatever continuing jurisdiction you provide.

Mr. ELSTON. Just so we do not overlook it.

Mr. LARKIN. Yes, sir. That, as a matter of fact, is one of the elements of 3 (a), that the committee decided should be considered. So there is the connection with the statute of limitations.

Mr. ELSTON. I am wondering why in section (a) of article 43 you refer only to desertion or absence without leave in time of war or aiding the enemy, mutiny, or murder. What about other cases that are labeled felonies in the civil courts, such as rape, robbery, burglary, arson, maiming, and countless others?

Mr. LARKIN. Well, I am not familiar with all the statutes of limitations in the different States. I think it is very rare that those crimes specifically do not have a statute in civil jurisdictions.

Mr. ELSTON. I think in most such jurisdictions you will find that the more serious offenses are never outlawed. There is a statute of limitations generally as to assault and battery and gambling and the minor offenses, but as to the serious cases, the felonies, ordinarily there is no statute of limitations.

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Mr. LARKIN. As I say, I do not know what the percentage is among the States. One example out of the 48 is certainly not conclusive but the one I am most familiar with is New York where only murder and treason are without statutes of limitation. The felonies all have statutes; and the misdemeanors have shorter statutes.

There is one further consideration: The Articles of War and the Articles for the Government of the Navy have heretofore exempted these crimes only, and we added "aiding the enemy," which is now exempted from the statute.

Mr. ELSTON. I would say that treason is aiding the enemy.

Mr. BROOKS. Treason is defined by the Constitution.

Mr. LARKIN. That is right.

Mr. ELSTON. Well, treason is defined as "declaring war against the Government or giving aid and comfort to the enemy," so that if you said "treason" it would include "aiding the enemy."

Here is the situation you are up against: If these are the only offenses that are outside the statute of limitation, a man who commits the crime of rape can simply desert or become a. w. o. l. and stay away 3 years and will thereupon go scot free. That is true, is it not?

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. Mr. Larkin, would that be true if the charges were sworn out?

Mr. LARKIN. Not under the provisions of (b) and (c), Mr. deGraffenried. That represents a somewhat complicated compromise. It may be pertinent here, Mr. Elston, to go ahead and discuss those two subdivisions and then reopen the idea you have in mind.

Mr. BROOKS. I think our idea in discussing this paragraph by paragraph was to maintain the discussion as much as possible in the proper order rather than to approve them individually.

Mr. LARKIN. I appreciate that, Mr. Chairman, except that the device adopted in (b) and (c), since it differs from the previous practice, might well answer the specific question that Mr. Elston is posing at this minute. There is a link for that reason.

I certainly am anxious to proceed and conclude each one subdivision individually if we can. In this case I think it would throw some light on it.

Mr. BROOKS. Subsection (b) merely says that, if the prosecuting official does not take action in 3 years after he knows about the violation, then it becomes limited by the statute of limitations; is that correct?

Mr. LARKIN. Not quite. The 3-year period in the first instance is measured from the time the crime is committed rather than from the time an official discovers it.

Mr. BROOKS. Would it not be better to change that and have it read from the time the proper official has knowledge of it?

Mr. LARKIN. That, I think would be an extension over both present military and civilian practice. Speaking from recollection only, I think the only type of offense which you find in civil jurisdictions that measures the running of the statute from the time of discovery is in the case of fraud. I think otherwise, they all uniformly start from the time of commission.

Perhaps, if I quickly tried to explain what is involved in (b) and (c), you would see the connection.

In (b) specifically we provide a 3-year statute of limitation. The crimes stated are the important ones that have heretofore in the

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Army had a 3-year statute. Some of those crimes, incidentally, have had a 2-year statute in the Navy. They are uniform in this code.

The point I have been referring to specifically is that the statute would cease to run under the provisions of (b) and (c) or would be be tolled on the signing of the charges and specifications and the delivery of those charges and specifications to the officer with summary court-martial jurisdiction.

That represents a difference from the present Army and Navy practice in this respect. At the present time the Army statute of limitations is stopped or tolled upon the arraignment of the accused. You follow the process of formal charges and specifications, and the statute does not become tolled until he is in custody and arraigned.

In the Navy at the present time the statute is tolled at the time of the referring or the signing of the charges and specifications, but under present Navy practice that does not take place until after the preinvestigations.

The Army's procedure, if you will recall, involves the signing of charges and specifications and then preinvestigation. The Navy's calls for investigation and after that the signing of charges.

By the provisions of this code we have unified that practice and have provided for a signing of charges and specifications initially and then follow with a preinvestigation at which, of course, the accused must be present.

In unifying the system of signing of charges and specifications, preinvestigation, and so forth, we were faced with selecting a point of time when the statute should be tolled. Should we wait until the arraignment, as in the Army, or should we do it in the fashion that the Navy does, when the charges are signed?

We changed the Navy practice, and the signing of the charges now takes place in the beginning, not after, as it does in the Navy. We felt, observing civilian practice, that the signing of the charges, which is equivalent to the filing of the indictment—which, incidentally, in civil jurisdictions almost uniformly tolls the statute whether the defendant is present or not—we felt that, since the Navy does that, although at a different time, and the civilian jurisdictions do, we should adopt the signing of the charges as the time when the statute is tolled, whether or not the accused is present, because you may have a number of situations where you will have a full case against a person, a full amount of information and evidence, but where you may not have him.

Now, if you have to wait until you get him in custody and arraign him, you may find yourself beyond the period of limitations. If you can toll the statute upon the signing, then, of course, it does not matter whether you have him or not at that minute. The statute is tolled; and, if you can pick him up later, at least he cannot use the statute as a defense.

Mr. RIVERS. Well, the thing to do is to always sign them.

Mr. LARKIN. We selected that. It is similar to the Navy's, although the Navy's did happen at a different time. It is similar to the civilian jurisdiction——

Mr. RIVERS. Is that what you call signing affidavits?

Mr. LARKIN. However, we were concerned in adopting this provision, and I think some witness suggested it to the committee, that it might be subject to abuse. Inasmuch as any person subject to the

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code can sign charges, it might happen that someone might draw up charges and sign them and put them in his desk. In other words, in order to toll the statute he could sign charges, put them in his desk, and then confront the person with those charges several years later. Several years later the accused would not have the opportunity of invoking the statute of limitations.

In order to preclude that possibility, we have provided, as you see here, that the statute is tolled only upon receipt of the sworn charges and specifications by an officer exercising summary court-martial jurisdiction.

Unless the accuser forwards the charges after he signs them to an officer exercising summary court-martial jurisdiction, who is, under the present practice, the next normal step, such signing of charges would not toll the statute. They would only be so effective if they are formally in the due course of business transferred to the summary court officer. It at least would prevent a person from writing up charges and then putting them in his desk and tolling the statute.

You see, you could not go any further than this now, if you did not have the defendant. You could not go to your pretrial investigation if you did not have the defendant, because you cannot hold one if he is not around.

So we have adopted all of that.

Now, in most jurisdictions, if there is the evidence available before the period elapses, if there is sufficient evidence to swear out charges, that tolls the statute, whether or not you have the accused. It does not depend on the circumstances of having him in custody.

I think this is germane to your original question.

Mr. ELSTON. In other words, if the charges are duly filed and are submitted to the officer exercising either special or general court-martial jurisdiction, and that is done within either 3 years or 2 years, depending upon the offense, no matter when they apprehend the accused, they can proceed to try him?

Mr. LARKIN. That is right.

Mr. ELSTON. Do you not think that maybe we should make it clear that the pretrial investigation may continue, even in the absence of the accused if the accused's presence cannot be obtained?

Mr. LARKIN. Well, I would think——

Mr. ELSTON. The reason I suggest that is this: If the authorities have to suspend a pretrial investigation until after the apprehension of the accused, it might be very difficult to examine witnesses and prepare a case.

Mr. LARKIN. I think there is a good deal of merit to that, Mr. Elston. Of course, it does dilute considerably the preinvestigation procedure that the Congress has provided and has regarded as a most important safeguard.

Mr. ELSTON. We do; but at the same time, if an accused person has voluntarily deserted or become a. w. o. l. and has made it impossible by reason of his own acts to go ahead with the pretrial investigation, certainly he cannot complain.

Mr. LARKIN. I certainly do not disagree.

Mr. BROOKS. The statute is tolled anyway when he leaves the jurisdiction.

Mr. LARKIN. That is right.

Mr. BROOKS. He has no complaint.

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Mr. DEGRAFFENRIED. You could not have what we call a preliminary in the absence of the accused, but I do not see why his absence should stop the investigation.

Mr. LARKIN. The preinvestigation cannot be held without the accused.

Mr. BROOKS. Mr. Larkin, all the evidence can be accumulated during his absence and put in affidavit form or otherwise preserved, but the formality of the pretrail investigation cannot proceed without his presence. Under our present set-up, is not the reason for that the constitutional right of the accused to be present and to be confronted by his witnesses?

Mr. LARKIN. No, sir; he has no constitutional right in the preinvestigation. On the trial, yes; but in the preinvestigation I do not believe there is any constitutional right of that kind.

Mr. ELSTON. It seems to me that we ought to put something in there that nothing in that section as to pretrial investigation should be construed as depriving the authorities of the right to go ahead and make whatever investigation they see fit to make if the accused has voluntarily absented himself from the jurisdiction.

Mr. LARKIN. May I ask one question to bring the problem to its logical conclusion? Would you then have the preinvestigation as provided held once you do get him?

Mr. ELSTON. It would seem that you should.

Mr. LARKIN. Yes.

Mr. ELSTON. But someone may come along someday and say that the authorities did it unlawfully because the accused was not present. In other words, they can go ahead and make whatever investigation they want. Then, when they apprehend him, he is entitled to whatever hearings can be conducted at that time. It may be that the witnesses are dead. They may be gone. It may not be possible to subpena them.

Mr. LARKIN. But in the meantime you would have committed to a permanent record or perpetuated whatever testimony is available.

Mr. DEGRAFFENRIED. At the trial, if you prove they were deceased or unavailable, would there be any way to use that testimony that they have given?

Mr. LARKIN. I think if it is made by statute a judicial proceeding it would be tentamount to a deposition. It would not be completely so, because defendant had not been represented and had not been afforded a right to cross-examine.

Mr. RIVERS. That is the thing.

Mr. LARKIN. I just do not know what the admissibility of such statements would be, in evidence.

Mr. ELSTON. I do not think that those things should be admissible against him if they are otherwise inadmissible.

Mr. LARKIN. Yes.

Mr. ELSTON. What I was thinking of is this: That the authorities should not be deprived of every opportunity to investigate the case because the accused is absent.

Mr. BROOKS. Is there anything there that prevents your investigation?

Mr. LARKIN. I think not, but I think Mr. Elston's idea is to give specific authority to undertake such investigation. I think by very simple amendment or addition to the preinvestigation section we could provide that.

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Mr. BROOKS. Why should we tamper with the preinvestigation section in order to give them a right to go ahead and make the investigation?

Mr. ELSTON. The only thought I had along that line, Mr. Chairman, was this: If we do not give them the right to go ahead some accused person may some day say they are not authorized to go ahead until he is apprehended, and then have a pretrial investigation in his presence. The statute that we have enacted does provide that he shall have the right to be present.

Mr. BROOKS. Then if you are going ahead without him the whole matter of a pretrial investigation is just an idle formality?

Mr. ELSTON. You still have to have that, after he is apprehended.

Mr. BROOKS. You would have another pretrial investigation.

Mr. LARKIN. You would have the one called for in article 32. Mr. Elston's idea, I think, is in the absence of being able to hold such an investigation until you can find the accused that some provisions should be made for perpetuating the evidence.

Mr. BROOKS. Why not simply place a stipulation there that nothing in this code shall prevent full investigation being made even in the absence of the accused.

Mr. RIVERS. That would be all right.

Mr. ELSTON. That is just what I suggested.

Mr. LARKIN. Fine.

Mr. BROOKS. But not as a change of the pretrial set-up.

Mr. LARKIN. I think that is a good suggestion.

Mr. RIVERS. About your depositions, of course, you will not have the opportunity like we do of the cross-examining of depositions in civil law. It will keep the witnesses from changing their testimony once you do get them. That is another thing.

Mr. LARKIN. That is right.

Mr. ELSTON. In civil courts you could not take depositions without giving the accused the right to be present.

Mr. RIVERS. That is right.

Mr. LARKIN. Here we have depositions, but a counsel on behalf of the accused has to be present, or be present when the interrogatories are settled.

Mr. ELSTON. That is where you are giving testimony against the accused. In the investigation you are not giving testimony against the accused, and the deposition can be read at the trial. A statement by an investigating officer could not be read at a trial.

Mr. BROOKS. In your Federal process the average case comes from the Secret Service or the FBI or other agencies. They make a full investigation of the case, even before any hearing at all is held, in complete absence of the defendant.

Now, during the course of that investigation the witnesses are called in individually, and in most cases they are asked to give statements. If they do not give statements, then they are allowed to make verbal statements and the testimony, as I recall, is prepared in a report accumulated by this agency. Then the showing is made in the presence of the committing officer, the grand jury, of the facts assembled in these investigations. Following that the defendant is apprehended, a warrant is put out for him, and he is apprehended, and he is brought up for a preliminary hearing before the commissioner, or his bond is set by the United States judge.

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Mr. LARKIN. Yes.

Mr. BROOKS. So that in our present process there is nothing which prevents a full investigation being made before a warrant is issued or an indictment is obtained. I think that is a very salutary arrangement. That is along the line you have in mind.

Mr. ELSTON. Yes.

Mr. BROOKS. Mr. Smart?

Mr. SMART. I realize, Mr. Chairman, that the committee which drafted the bill had great difficulty with this particular article. I specifically remember when the House committee was considering H. R. 2575 that Mr. Elston had grave misgivings about a provision which would permit a man to just hide long enough to escape punishment.

I further remember the response of General Hoover, who at that time was testifying on behalf of the Judge Advocate General's Department, who pointed out the difficulty of prosecution when the witnesses, who presumably were mostly service people, had scattered to the four corners of the country, and their evidence or testimony had not been perpetuated.

I would like to point out what I think are the impracticabilities of this particular provision in (b) and (c). Let us find out who a summary court officer is.

I think we should consider this as a matter of wartime rather than peacetime. In peacetime, I do not think you are going to have so much difficulty in apprehending these people within the statutory period of limitations; whereas at the close of war you have units deactivating. I am thinking of divisions particularly, of the Ground Forces, where you will have a complete division deactivation.

The question then immediately arises as to who is the summary court officer having jurisdiction over that command. The command is deactivated. The only thing you can say is that it must go up through channels. I do not know whom they would designate in that event. Maybe Mr. Larkin can say.

I say at that point it returns to the desk-drawer operation. I just do not think it is a practical situation. I would much rather see, if you have misgivings about an offender escaping and you want to have continuing jurisdiction over him for a period of time, that you extend the statute of limitations from 3 to 5 years or whatever period of time you think appropriate, rather than to hook it to such a nebulous process as this. I just do not think it is practical. Maybe I am completely in error. I would like to hear Mr. Larkin's reaction to that.

Mr. LARKIN. The difficulty described by Mr. Smart turns around, I believe, the situation where a unit may be deactivated and it specifically no longer has officers who have summary court-martial jurisdiction or greater court-martial jurisdiction.

I believe the practice in the Military Establishment is that when units are deactivated that another active or permanent outfit takes over those records; and for the purposes of this, for instance, the summary court-martial officer in the continuing unit would be the substitute officer.

Now I would like to check the accuracy of that from an operational standpoint.

Is that about the way it works, in connection with a unit that is deactivated, Colonel Dinsmore, do you know?

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Mr. SMART. I can point out an analogous situation. You could take the situation of Korea. We went in there with three divisions. The Fortieth Division went in first, and then the Sixth and Seventh Divisions followed. The Fortieth Division went straight on through and when it got to the southern end of Korea it was deactivated. The Sixth Division then occupied the southern half of Korea and the Seventh Division occupied the northern half of Korea, and the Twenty-fourth Corps, under General Hodges, was in over-all command. When the Fortieth Division deactivated, certainly we in the Sixth Division had nothing to do with the records. I do not know how many men they left in the particular part of Korea who had committed offenses, but certainly the Sixth Division in command of the tactical situation had nothing to do with their records or personnel. We inherited some of their men, but those men whom we did not inherit did not have their records come to us. I do not know whether General Hodges had the records or not, but I think as a matter of regulation that those records are bundled up and sent back to Washington. If I am right I would appreciate hearing it, and if I am wrong, likewise.

Colonel DINSMORE. That is correct. The records are deactivated when the division is deactivated, by forwarding to the Adjutant General, and being placed in his custody.

Mr. ELSTON. Could we not write a provision in the law and say that if an outfit is deactivated the filing of the charges with the Judge Advocate General would suffice?

Mr. LARKIN. May I point out this: Do you not observe a practical defect. Up to the time it is deactivated nobody has sworn out a charge. If they have sworn it out on July 1, and then they deactivated on July 30, they are under an obligation to give it to the summary court officer who still exists. After July 30, when it is deactivate, they are transferred to other places. If they swear out charges after July 30 they are under an obligation to forward it to the summary court-martial officer whom they are under at that time.

I just do not see how you could have it otherwise. After July 31 when they have been deactivated and are transferred elsewhere, any attempt to date back something would not operate because they would have been under an obligation as of the day they claim to have sworn out charges to forward them to the summary court officer who was there as of that time.

Mr. ELSTON. Of course, the statute, as it is written here, provides that the sworn charges may be filed with an officer exercising court-martial jurisdiction.

Mr. LARKIN. That is right.

Mr. ELSTON. That would limit them to the command authority except, it says, "exercising jurisdiction over the command." That would depend on what "the command" means.

Mr. SMART. That is the point. It is almost beyond my conception that a man would remain in military control and in a military status, et cetera, to believe tht he could cover up a serious offense longer than 3 years.

Now, if in time of war, subsection (a) provides if he is absent from his command, he then goes either into desertion or into AWOL, in time of war the statute of limitations does not run.

Mr. ELSTON. How would you correct it? What is your suggestion?

Mr. RIVERS. Yes; what is your suggestion?

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Mr. SMART. I would prescribe what I wanted to be the statute of limitations, and omit the last part of (b) and (c). In time of war the statute of limitations will not run if he leaves the command. If he is in the command, in 2 or 3 years you will find out if he has committed a serious offense.

I think this is too nebulous to hook to for a statute of limitations.

Mr. ELSTON. If you do not have (b) and (c) in, your statute of limitations simply lets a man go scot free, whereas (b) and (c) make it possible to file charges within 2 or 3 years, depending upon the nature of the offense, and he can stay away 10 years and still be prosecuted if they catch him.

Mr. SMART. I am sorry if I have not made myself plain, or if I repeat. My point is this: In peacetime I still say that they will apprehend him in 9 cases out of 10, because of your regular troop activity, and the greater control over them. That is contrasted to wartime situations. where you have great fluidity and movement of people all over the country and in all foreign countries. In wartime situations you would have the man under desertion or AWOL, against which the statute does not run and the punishment for which, in case of desertion, is death, which is more serious than most of the articles covered in subsection (b).

Mr. ELSTON. We had testimony before us, you will recall, by a Member of Congress from up in Michigan who called to our attention the case of a veteran who had some home and married and had a family; and then they came in and arrested him for an offense committed several years before.

Mr. SMART. It was less than 3 years, I think. I believe that was the testimony of that particular case.

Mr. ELSTON. I might easily have been more than 3 years.

Mr. SMART. I will grant you that it might have been more than 3 years. If they were not alert enough to apprehend that man within 3 years, I personally doubt if they should have jurisdiction to try him.

Mr. ELSTON. The civil authorities very often are not able to apprehend a fugitive in 2 or 3 years. A pretty smart criminal can hide himself. He may leave the country and go to some foreign country and may be gone for 5 years. Then he can figure, "I am all washed up with my case. I can go back now."

I do not think we want to take the position that any man can leave the country and by his own act outlaw his crime.

Mr. DEGRAFFENRIED. The thing I have on my mind is that a man might commit murder and hide the body. The body might not be found for a long length of time. When the body is finally found there might be some method of identifying the deceased, by some peculiarity of the teeth, or something like that, and where the body could be positively identified they might get the evidence against this defendant. Then they could not try him until they had some way to prove the corpus delecti, that the person was actually killed and had not just walked off and disappeared.

Mr. SMART. I agree with the possibility which you raise, Mr. deGraffenried, but I do think it is an extreme possibility.

Mr. DEGRAFFENRIED. I think it is, too, in the murder case. I can see the difference in these other cases, where a woman was ravished, if she did not make a complaint within 3 years. If some crime of

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that kind occurred you would have a different situation, but where a person just disappeared and you did not know where he had gone, whether he had walked off or not, or what had happened to him for several years, that is a case of different circumstances. If after that you found the body in a state of decomposition, but you were able to identify the deceased by some method, even though the defendant had gone, I still think that in a murder case like that, especially, we ought to devise some means of preferring charges against the accused at that late date.

Mr. BROOKS. What would you and Mr. Smart think of this approach: Instead of approaching it from that angle, would it be much more paper work if we wrote in here a specification that copies of these charges should be sent to the Judge Advocate General of the respective services, and that he would be the officer indended, rather than the stipulation in the present provision which refers to an officer exercising summary court-martial jurisdiction?

Mr. SMART. That would certainly answer one of my criticisms, because I think this question as to who is an officer exercising summary court-martial jurisdiction over a command which has been deactivated is a most nebulous place to hook the statute of limitations.

Mr. ELSTON. I suggested, and I think the chairman suggested the same thing that the charges be forwarded to the Judge Advocate General. You can even say, "If the command is no longer activated then the charges shall be filed with the Judge Advocate General."

I think all our problems are taken care of by subsections (b) and (c), and by continuing a case in the manner of filing the charges. Those cases are continued, but they have to file them within 3 years. or 2 years, as the case may be.

In other words, they cannot just let them rest for 5 years and then bring up a charge against a person. If a charge has been made in 3 years, or 2 years, depending upon the offense, whether or not it is filed is of no tremendous importance, so long as it is filed in the proper place. That would be with the command if still activated, or with the Judge Advocate General if the command has been deactivated.

Mr. BROOKS. I would like to hear from Colonel Dinsmore.

Colonel DINSMORE. Mr. Chairman, may I suggest that it be filed with The Adjutant General, because he is the custodian of all the records.

Mr. BROOKS. What do you think of that idea of requiring copies of the charges in these cases to be filed within a certain period of time with The Adjutant General?

Colonel DINSMORE. I would be in favor of that, Mr. Chairman.

Mr. BROOKS. What does the Navy think about that?

Captain WOODS. I think that would be entirely acceptable to the Navy, sir.

Mr. BROOKS. Do you think it would help the present language?

Mr. LARKIN. I think it would insure that there is no tabling of charges. We, as I say, recognized the possibility and attempted to cure it. I think your suggestion just nails it down that much more. We certainly would be happy to take it.

Mr. BROOKS. We do not want to overlook the Air Force. Who represents the Air Force?

Mr. LARKIN. Major Alyea. I will speak on behalf of the Air Force, sir.

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Mr. BROOKS. Is that all right with the Air?

Major ALYEA. Yes, sir.

Mr. RIVERS. How do you reconcile that to your terminology, Captain Woods?

Captain WOODS. It would have to be the Chief of Naval Personnel.

Mr. RIVERS. You do not speak about deactivating a command in the Navy, do you?

Captain WOODS. Decommissioning, or commissioning in reserve.

Mr. ELSTON. Mr. Chairman, I move that the amendment be drawn up in the appropriate language by Mr. Smart and Mr. Larkin, along the lines that we have discussed.

Mr. BROOKS. You have heard the motion. Is there any objection? If not, it is so ordered.

Now, we had better finish this paragraph.

Are there any other suggestions with reference to the paragraph?

Mr. ELSTON. I would like to know just what paragraph (d) means. If you have (b) and (c), what does (d) mean, when you say "periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article."

What do you mean by the period of limitation there?

Mr. LARKIN. Depending upon whatever type of offense it is, whether it is 2 years or 3 years.

Mr. ELSTON. Would you mean by that that the articles, the charges, would not have to be filed until he had returned to the territory of the United States?

Mr. LARKIN. Yes. If he is outside the territory of the United States that is another circumstance which tolls the statute, which is a typical provision of statutes of limitation. That is an additional circumstance.

Mr. BROOKS. Do I get that right, (d) refers to the statute of limitations for filing charges, referring to the limitation following the filing of charges?

Mr. LARKIN. That is right.

Mr. RIVERS. In point of time?

Mr. LARKIN. Yes, sir.

Mr. RIVERS. That is like that Bergdoll case in Philadelphia, the case of Grover Cleveland Bergdoll.

Mr. LARKIN. Yes, I remember that.

Mr. RIVERS. I think he was away God knows how many years.

Mr. LARKIN. In other words, if an offense is committed in 1 year and the man leaves the territory and stays away for 5 years and comes back and you indict him while 6 years have expired since the commission of the offense you nevertheless exclude the period that he has been out of the territory and you are still within the 3-year limit.

Mr. RIVERS. That is right.

Mr. ELSTON. That is the law now.

Mr. LARKIN. Yes, sir; it is the law now. We have made a change in wording to broaden it a little bit or, at least, to clarify the definition of the word territory in which the United States has authority to apprehend him.

The significance is that normally you would consider jurisdiction as the continental limits of the United States. However, if a man is

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in Mexico that would be territory over which we would have no power to apprehend him. If he was in England and we were at war and England was an ally of ours we would have the power to apprehend him even though he is outside the territorial limits of the United States.

Mr. BROOKS. It would cover the occupied territories too, would it not?

Mr. LARKIN. That is right.

Mr. BROOKS. Mr. Larkin, if there are no further questions on (d), I would like to ask you to go to (e), and I wish you would explain the idea of (e) to the committee.

Mr. LARKIN. Well, (e) is a continuation of a provision of article of war, No. 39 and is to cover extraordinary cases where a trial during the course of a war might be adverse to the interests of national security and for that purpose the President upon certification by the Secretary of the Department could extend the statute of limitations to a period of 6 months after the termination of hostilities.

Mr. BROOKS. Now, that does not give the President or the Secretary of any Department the authority to define new offenses, does it?

Mr. LARKIN. Oh, no, sir. It applies to the operation of time and its application to the statute of limitations.

Colonel DINSMORE. A case of that kind is the Kimmel and Short case.

Mr. RIVERS. It is just like all of our statutes of that kind, it shall be confined to the duration of the war and 6 months thereafter. Everything we wrote during the war was that way.

Mr. LARKIN. That is right. This is an adoption of present provisions.

Mr. BROOKS. Are there any further explanations?

Mr. LARKIN. I can go on with (f), if it is agreeable, Mr. Chairman.

Mr. BROOKS. Yes; why not go on with (f)?

Mr. LARKIN. (f) is an incorporation of a provision in the United States Code, title 18, section 3287 which provides generally for frauds against the Government itself, and in that type of case provision now exists in the Federal law that the statute is suspended until 3 years after the termination of the war.

We have provided it here because it is not clear that it applies to court-martial cases by virtue of being in title 18.

It is Federal law for United States courts, and while courts martial are generally construed as Federal courts, in order to insure its construction and application here we have adopted the wording of title 18 of the code and provided it here.

Mr. ELSTON. Would subsection (3) of section (f) contemplate making any persons not under military authority subject to military trial?

Mr. LARKIN. No, it would only be those persons who are subject to military law by virtue of article 2. Other civilians would not be subject, but they would be subject to this provision under the United States Code.

Mr. RIVERS. Would that include people employed in enemy territory or occupied countries?

Mr. LARKIN. If they are accompanying and serving with the armed forces, those people would be covered and others would not.

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Mr. RIVERS. What about the people in Germany now, those who are teaching school for the War Department over there?

Mr. LARKIN. For the War Department?

Mr. RIVERS. I went to Europe and there were about 65 of them a year or so ago who were there teaching the children of enlisted personnel in the Army.

Mr. LARKIN. They are paid by the Army?

Mr. RIVERS. The War Department hired them.

Mr. LARKIN. I should say they are subject to this provision.

Mr. RIVERS. A lot of them are billeted at Heidelberg.

Mr. LARKIN. Yes.

Mr. RIVERS. I think they are subject to the code.

Mr. LARKIN. They would be subject to the provisions of this code until 3 years after they get back in the event they commit a fraud against the Government.

Mr. RIVERS. I am talking about that.

Mr. LARKIN. That is right.

Mr. BROOKS. Do you think that time limit of 3 years is sufficient? We are dealing with fraud here and, of course, I do not know when the war will be formally over, but it is conceivable that we might be engaged in a conflict where it will be over the day when the last shot is fired. Is 3 years long enough to run down fraud, especially when you have these contracts involved?

Mr. LARKIN. Well, we do not care to extend it further than the Federal court jurisdiction at present as provided by this section. I think our experience has been, although it can always change, as you indicate, that the official termination of the war is usually not declared until a considerable period after the cessation of actual hostilities, and we provide for 3 years after that, so I should say that it is adequate.

Mr. RIVERS. Would you say the cessation or the "secession" of hostilities?

Mr. LARKIN. Either one.

Mr. ELSTON. Is there anything in the statute of limitations defining fraud that defers the running of the statute until the fraud is discovered?

Mr. LARKIN. You mean in the code, Mr. Elston?

Mr. ELSTON. Yes.

Mr. LARKIN. I think not—no.

Mr. ELSTON. Then you might have a case where fraud was not discovered until 4 or 5 years afterward.

Mr. LARKIN. That is right.

Mr. ELSTON. Until 4 or 5 years after the offense was committed, and the offending persons would be entirely absolved from any liability. Now, that is different from the civil law. Under the civil law the primary fraud statute defining fraud provides that there is no statute outlawing the offense, that it applies until the fraud is discovered.

Mr. LARKIN. I know that is common in civil practice, Mr. Elston. I would point out that on close reading this article indicates that the running of this statute of limitations shall be suspended until 3 years after the termination of hostilities.

Now, we have not arrived at the termination of war and it is now 2 years after hostilities. Assuming that we have a termination of

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hostilities now, then for 3 years there is a tolling and the statute does not start to run until after those 3 years have elapsed.

Now, of course, throughout that whole period you still may not discover fraud. I will concede that.

Mr. ELSTON. You are placing the Government in a different position than you place other persons who may be defrauded. In the civil courts generally there is no statute of limitations as to a felony, so that a fraud which was committed against a corporation or against an individual could be prosecuted any time the fraud was discovered, whereas the fraud perpetrated against the United States could not be prosecuted regardless of how serious it was unless it was discovered within 3 years after the termination of the war.

Mr. LARKIN. No, whatever period is fixed as the termination date.

Mr. ELSTON. Yes, whatever period is fixed.

Mr. LARKIN. That is true, but it is not an innovation with us, and this is a Federal court rule, so that both of them, perhaps, are wrong, or both of them certainly are different than many State fraud statutes of limitations.

Mr. BROOKS. Does the Federal-court rule contemplate the idea that that fraud must be known to the prosecuting officer before the limitation shall begin to run?

Mr. LARKIN. This is it; subsection (f).

Mr. BROOKS. It is identical to this?

Mr. LARKIN. Yes; section 3287 of title 18 of the United States Code.

Mr. DEGRAFFENRIED. Some States make a distinction between criminal actions for fraud and civil actions. In our State you cannot prosecute a man for embezzlement or any kind of fraud after 3 years whether you discover it in the 3-year period or not. In a civil suit the statute of limitations does not begin to run until after the fraud is discovered.

Mr. LARKIN. I think, Mr. deGraffenried, it more often applies to a civil action than to criminal.

Mr. DEGRAFFENRIED. As I understand it under this provision, if the 2-year statute applied you would have 3 years after the cessation of hostilities, and the statute would not begin to run until 2 years after the cessation of hostilities.

Mr. LARKIN. Three years.

Mr. BROOKS. Of course, the limitation is intended just to close the book, and I suppose in this case it is the same as others.

Are there any further suggestions on or is there any further discussion of this article? If there are not, and there are no further objections to article 43 as read and amended, the committee will approve the article.

Article 44.

Mr. SMART (reading):

ART. 44. Former jeopardy.

No person shall, without his consent, be tried a second time for the same offense; but no proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this Article until the finding of guilty has become final after review of the case has been fully completed.

References: A. W. 40; N. C. and B., section 408.

Commentary: This article is derived from the first paragraph of A. W. 40. The second paragraph of A. W. 40 is covered in article 62 of this code.

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Mr. ELSTON. May I ask where you got that definition of jeopardy?
Mr. LARKIN. The first sentence?
Mr. ELSTON. No; all of it.
Mr. LARKIN. Up to the first semicolon it is an exact copy of article f war 40, and the balance is a very close copy of the first paragraph n article 40.
The only change is that article 40 said that no proceeding in which he accused has been found guilty, and so forth, shall be a trial in the ense of the article until review if there be one and the confirming uthority shall have taken final action upon the case.
Since we have abandoned the language of reviewing and affirming uthority in our appellate system and have adopted uniform language, e have revised the language to take care of the same situation without sing the words "review" or "confirming authority". Other than that t is the same.
Mr. ELSTON. I am wondering about the last part of the section there. Any person accused of a crime in the civil courts is in jeopardy ordinarily when a jury has been impaneled and sworn.
Mr. LARKIN. That is right.
Mr. ELSTON. You do not have to wait until the case has been finally eviewed.
Mr. RIVERS. That is right.
Mr. ELSTON. Suppose you had a prosecution by court martial. The court martial has assembled, and some evidence has been presented, and the Government decides, or the military authorities decide, that they perhaps do not have enough evidence, and that if they delay the trial they can get more evidence. So, they just dismiss the proceeding.
Now, the accused is not in jeopardy in that case because there has not been a completion of the trial and final review has not been had; is not that right?
Mr. LARKIN. Yes, sir; that is right.
Mr. ELSTON. Suppose there has been a court-martial trial and the accused has been found guilty and the sentence has been imposed. Say the sentence was 1 year, and the commanding officer or somebody thought that it ought to be 5 or 10 years, life, or death, or something else, and they do not wait until the case is finally completed, or it may be that the accused does not want to proceed with it, or assuming that he has started an appeal proceeding, what would prevent you from assembling another court martial and trying the accused before final review under this section?
Mr. LARKIN. I do not think anything would, except, of course, that the second trial by virtue of other provisions in the code could not impose a higher sentence than the first sentence.
Mr. ELSTON. It seems to me that the language in here is tremendously confusing and at variance with the law.
Mr. LARKIN. I would not say it is not at variance with the present military law. But the military law has been at variance with the general civil law.
Mr. ELSTON. Former jeopardy is a constitutional right. The Constitution provides that no person shall be twice put in jeopardy for the same offense.
Mr. LARKIN. That is right, and the question is whether the constitutional provision of jeopardy follows the military. The constitutional provision of a trial by jury does not, for instance.

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That problem, as you know, is before the Supreme Court at this time, and I hope it will be decided in the Wade case, although it is possible that the Supreme Court will decide that case on another ground.

That case, very briefly, and I think it has been mentioned by witnesses here, concerns circumstances where a man was tried by a court martial, and the court retired to deliberate, and before it conc uded its deliberations, and before arriving at a verdict it opened court and adjourned the trial for the purpose of securing additional witnesses on the court's own motion.

During the course of its adjournment, the convening authority withdrew the charges and sent them to another command, and in the meantime, or at that time the whole unit was moving very rapidly through Germany, and it covered tremendous distances in a very short time.

Wade was retried, if you remember, or there was a rehearing of his case in another command, and the question now is before the Supreme Court. It was argued about 2 weeks ago.

The point there, of course, was whether the tactical problems of the command in its moving so rapidly through Germany in the last stages of the war, whether there was such an imperious necessity by virtue of tactical considerations that it was appropriate to terminate the first trial.

Whether the Supreme Court is going to determine the case on the question of the imperious necessity, in which case it was appropriate to retry the case, or whether they will touch on the constitutional problem of whether double jeopardy attaches in that kind of a case is something I do not know at this time. In view of the speculation on what they will do we have not tried to guess and have incorporated the same provision as has been in military law. As Colonel Weiner has pointed out that is tantamount to the common-law notion of jeopardy.

There is one other consideration, if I may be indulged another moment, that I think has to be kept in mind in connection with this problem, and that is that the review provided in the military system and in the uniform code by the convening authority in the first instance, and by the board of review in the second instance, is mandatory and automatic.

Now, of course, in civil courts it is not automatic. If a man is convicted and there is a verdict against him, the appellate tribunal in the civil jurisdiction can consider the case and they can set aside that verdict of guilty and order a new trial, but they do so upon waiver by the defendant in the form of his petition for review and his request for reversal.

Now, in the military organization as you know, most cases are automatically reviewed. The convening authority or the board of review may determine for one reason or another that the verdict of guilty is not sustainable. They change that verdict, make it a nullity by setting it aside and send the case back for rehearing, or in some instances under another provision a new trial may be provided. If jeopardy first attached in the beginning of the case, then if the verdict was set aside and not sustained you could not have a rehearing unless you got the consent of the accused because jeopardy would probably

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prevent rehearing. This it seems to me would involve a major change in the automatic appellate system that is provided in military law.

If, of course, you had no mandatory appeal, and you had jeopardy attach as soon as the court was sworn, or the first witness was sworn, then you would not have the problem because you would require the appeal to be on the motion of the accused. The Supreme Court may settle the whole question for us, I do not know, but if they do, or if anybody else is disposed to change this you should bear in mind that it materially affects this automatic review, which is, of course, a protection over and above anything that is found in civilian jurisprudence.

Mr. RIVERS. What would be the reason for having another case until it has been reviewed? I do not understand that.

Mr. LARKIN. What would be the reason for having a retrial?

Mr. RIVERS. Another case or a retrial, because as Mr. Elston says, you could have a number of them.

You know, under the GI bill of rights it gives you a review, too. Does this change the GI bill of rights?

Mr. LARKIN. No; it does not.

Mr. RIVERS. Under the GI bill of rights it gives you a review.

Mr. LARKIN. It provides a review for special and summary courts. You do not have one for general courts or for dishonorable discharges or bad conduct discharges.

Mr. RIVERS. It refers to bcd's?

Mr. BROOKS. Does that involve jeopardy? Under the GI bill of rights, does that involve jeopardy, or is that civil rights?

Mr. LARKIN. That is a correction of records. I do not think there is any authority to order a retrial.

Mr. RIVERS. It says until the review has been fully completed.

Mr. BROOKS. Let us hear from the colonel now.

Colonel DINSMORE. This provision went in in 1920 in the provision in the Articles of War at that time, and as far as I know it has caused no trouble over the years.

It may be that the decision in the Wade case will effect an interpretation of this article, but the Wade case was an unusual set of circumstances. A rehearing can be ordered. That is the language we use, but no man can be convicted of any offense at the rehearing of which he was not convicted before, and he cannot be punished any more severely. Any sentence in excess of a sentence that was adjudged in the first instance may be changed at the rehearing.

This code provides that a rehearing can be ordered in case there is a lack of evidence.

If Mr. Elston and the other members of the committee are not satisfied when I have finished I would like the opportunity to refresh my recollection about the history of the whole thing back in the twenties. You cannot carry these things in your mind over the years.

The purpose of it, however, was to prevent a situation where an obviously guilty man would escape punishment on a technicality. He has every protection, and he cannot be punished any more severely and cannot be convicted of any offense of which he was not convicted before unless you have a new set of charges and a new investigation and consolidate the two cases.

Mr. BROOKS. Does the Navy want to say anything on this?

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Captain WOODS. This does represent an extension of our present law. The charge is entirely acceptable to us.

Mr. BROOKS. It is aceptable?

Captain WOODS. Yes.

Mr. BROOKS. What about the Air Force; do you want to say something about it?

Major ALYEA. It does go a little further than the present law requires the appellate authority to go. I do not think we have any objection to it.

Mr. RIVERS. You do not object to having any more authority.

Mr. LARKIN. I don't think it goes further. The present language says that no proceeding in which the accused has been found guilty by a courtmartial upon any charge or specification shall be held to be a trial in the sense of this article until after review, if there be one, and the confirming authority shall have taken final action on the case.

Mr. BROOKS. Mr. Smart.

Mr. SMART. There has been a suggestion made as to a change in the language on page 38, lines 2 and 3. It only involves proper wording It has been suggested that we change the words in line 2 to read:

of this article until the finding of quilty has been affirmed, reversed, or modified.

What would be the effect of that language; would it change the sense of the article in any degree, and if not, would not that be a better choice of words than those which are presently used?

Mr. LARKIN. I think the word "final" has been used because we do not know in any case at what point it will be final. Whether the Judicial Council is going to review a case may be dependent upon the fact of whether they grant a petition. We just do not know when they will, and when they will not grant a petition, so that a finding of guilty may be in fact final with the action of the board of review.

In other cases it may not be final until the Judicial Council has acted, but we just do not know under what circumstances or in what specific cases they will act. It will depend upon the law involved, so that I think the word "final" is the better word.

Mr. BROOKS. Well, like in most instances, regardless of what we write into this article, the Supreme Court is going to be the last authority.

Mr. LARKIN. I think that is perfectly true.

Mr. BROOKS. We could undertake to try to cover every case of double jeopardy, but our definition would not necessarily hold water.

Mr. LARKIN. That is right. It is so very speculative as to just what the Supreme Court will say, that is is hard to guess in advance, but since it is a provision that has existed for so long, and since it is connected with the automatic appeal we adopted what was in the law and if the Supreme Court says this violates the Constitution or that the Constitution follows a person into the military for a court martial, or that it should apply otherwise, that will be binding and that is all there is to it.

Mr. RIVERS. A lot of witnesses have testified that when a man takes an oath to serve in the military forces he does not forthwith lose his constitutional rights. When this Supreme Court decision comes out, in effect, will that then be settled?

Mr. LARKIN. Not as to all of them.

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Mr. RIVERS. As to any of them. He should not suspend any of his constitutional guaranties by virtue of the fact that he submits to an oath to serve in the armed forces.

Mr. SMART. Well, I think he very definitely does surrender some of them, Mr. Rivers.

Mr. RIVERS. I am wondering whether the Supreme Court would so hold.

Mr. SMART. I am sure they would agree with that because as a civilian you can go down the street and cuss out anybody you care to, but if you are in the Army or Navy you cannot do that, and to that extent he has certainly surrendered his constitutional right of free speech.

Mr. RIVERS. The Supreme Court does not give you a windshield when you start to cuss people out.

Mr. LARKIN. Trial by jury is a constitutional right that has held not to apply.

Mr. RIVERS. Your answer would be no.

Mr. BROOKS. If that were not the case, why would the Supreme Court be sitting today on what is double jeopardy under the Constitution?

Mr. LARKIN. As Colone Dinsmore points out, they may decide the Wade case on the question of the imperious necessity rather than on constitutional grounds and the question may still be open after they finish with that case.

Mr. ELSTON. Has that case been argued?

Mr. LARKIN. Yes; it has been argued.

Mr. ELSTON. And the decision may come down any day?

Mr. LARKIN. I think so.

Mr. ELSTON. Perhaps by the time we finally write this bill there will be a decision by the usual divided opinion.

Mr. COLE. Mr. Chairman.

Mr. BROOKS. Mr. Cole.

Mr. COLE. With your permission, Mr. Chairman, I should like to go back to the question which Mr. Smart has raised with respect to a strict interpretation of that proviso. As you interpret it would it make it possible for an individual to be found guilty by a court and upon review to be acquitted by the higher authority and still come back and be tried again?

Mr. LARKIN. No.

Mr. COLE. Taking the strict interpretation of it you say, "until the finding of guilty has become final."

What you mean is until the question of guilt has been resolved and becomes final?

Mr. LARKIN. Yes; Mr. Cole, I think that is a very germane analysis and the language is perfectly susceptible of that inference. The difficulty is that this has to be read in connection with article 62, if I might bring it to your attention, where we provide that wherever there is an acquittal of any charge that it cannot be sent back for rehearing or any other proceeding.

Mr. RIVERS. But this has to be approved by the reviewing authority——

Mr. LARKIN. An acquittal may be reviewed for jurisdictional purposes only.

Mr. RIVERS. I see.

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Mr. LARKIN. An acquittal may not be sent back for retrial at all.

Mr. ELSTON. It is awfully hard to define jeopardy even in civil courts. There are countless decisions trying to define it.

It is not technically correct to say that no person shall, without his consent, be tried the second time for the same offense because he can be tried a second time for the same offense where a case has been appealed by himself.

Mr. LARKIN. That is right.

Mr. ELSTON. And where there has been a reversal, and it is tried again, he may want a second trial, but he gets it because he was the one who instituted the appeal.

Mr. LARKIN. There I guess the reasoning is that the first is a nullity for the same reason and you are trying it de novo, but in reality it is the second time.

Mr. RIVERS. Do we not have a lot of these two-trial cases where we try a man in the Federal courts or the State courts?

Mr. LARKIN. We have no control over that. This jeopardy here would apply to a court martial or a military tribunal.

Mr. DEGRAFFENRIED. Is it true when the second trial has been had that the defendant could get more punishment than in the first?

Mr. LARKIN. Yes; if he is tried the second time and the crime for which he is tried carries a mandatory sentence which was not imposed the first time.

Mr. GAVIN. Proceed from there, Mr. Larkin.

Mr. LARKIN. Then the court in the second case can and must impose a mandatory sentence because the first court has made a mistake of law in not imposing it, but other than that if the sentence is legal the first time, whatever it is, on rehearing the court cannot impose a greater sentence.

For instance, if at the first trial he was sentenced to 5 years for a crime which carried a maximum of 30 years, on a rehearing he could not be sentenced to more than 5 years again.

In a case where he is tried for a crime which carries the mandatory sentence of death, and the court in the first instance did not follow the law and did not give him that mandatory sentence, but gave him some other confinement or sentence, and if the second time he is found guilty, they would have to give him the mandatory sentence that was called for.

Mr. BROOKS. My suggestion in reference to this article, if it meets with the approval of the committee, would be to approve it as it is subject to reopening it in the event of the Supreme Court decision, which is entirely possible, before we terminate the hearings.

Is there any objection to that? If not, it stands approved subject to that exception.

Article 45.

Mr. SMART (reading):

ART. 45. Pleas of the accused.

(a) If an accused arrainged before a court martial makes any irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded guilty.

(b) A plea of guilty by the accused shall not be received in a capital case.

References: A. W. 21; N. C. and B., sections 413, 416, 417.

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Commentary: Subdivision (a): Drawn from present Army and Navy provisions, except for the provision for entering the plea of not guilty in the record, which is new. The question whether the plea of not guilty should be entered, in the situations covered in this subdivision, will be treated as an interlocutory question, according to the procedure prescribed in article 51 of this Code.

It is not intended that a plea of not guilty to the offense charged, but guilty to a lesser included offense, will be an irregular pleading within the meaning of this article.

Subdivision (b) is new but enunciates a rule now followed by the Army, and, as to certain capital offenses, by the Navy.

The provisions of this article will be supplemented by regulations issued by the President. It is contemplated that the recommendations of the Keefe board as to the procedure to be followed by a court martial when a plea of guilty is entered will be adopted. The proposed procedure is as follows (see Keefe report, p. 142):

(1) In general and special court martial cases, the plea should be received only after the accused has had an opportunity to consult with counsel appointed for or selected by him. If the accused has refused counsel, the plea should not be received.

(2) In every case the meaning and effect of a plea of guilty should be explained to the accused (by the law officer of a general court martial; by the president of a special court martial; by the summary court), such explanation to include the following:

(*a*) That the plea admits the offense as charged (or in a lesser degree, if so pleaded), and makes conviction mandatory.

(*b*) The sentence which may be imposed.

(*c*) That unless the accused admits doing the acts charged, a plea of guilty will not be accepted.

(3) The question whether the plea will be received will be treated as an interlocutory question.

(4) The explanation made and the accused's reply thereto should be set forth in the record of trial exactly as given.

It is also contemplated that the regulations will provide that the law officer or the court shall explain the meaning of any special defenses or objections which may appear to be available to the accused, in any case in which he is not represented by counsel, and shall advise him of his right to make them, both as to the offense charged and lesser included offenses, before pleading to the general issue.

The provisions contained in chapter XIII of the Manual for Courts Martial, United States Army, 1949, dealing with the procedure for raising special defenses and objections by motion, were considered by the ad hoc committee in connection with this article and approved as a sound basis for similar provisions to appear in the new regulations. The ad hoc committee also considered, and approved, the provisions in the 1949 Manual for Courts Martial requiring that if it appears from the charges that the statute of limitations has run against an offense, or in the case of a continuing offense, a part of an offense charged, the court will bring the matter to the attention of the accused and advise him of his right to assert the statute. If the accused pleads guilty to a lesser included offense against which the statute of limitations has apparently run, the court will advise the accused of his right to interpose the statute in bar of trial and punish-

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ment as to that offense. Similarly, at the time the court is making its findings, if by exceptions and substitutions the accused is found guilty of a lesser included offense, to which he has not entered any plea, the court will advise him in open court of his right to avail himself of the statute in bar of punishment.

Mr. BROOKS. Is that substantially the present provision?

Mr. LARKIN. Yes.

Mr. RIVERS. It is the same as the civil law in that respect.

Mr. LARKIN. It is substantially the same. However, we have extended it a little bit, and I think we have by virtue of our explanation in the commentary, which becomes a part of the record, supplied in much greater detail all the instances in which we feel the plea of guilty should be accepted.

Those circumstances, in general, are that the plea will be accepted only after the accused has had an opportunity to consult with counsel. If the accused refuses counsel or refuses to consult with him then his plea will not be taken.

That is an added protection that we feel should be forced on him.

Mr. BROOKS. In other words, the court, in effect, arbitrarily says he will enter a plea of not guilty.

Mr. LARKIN. If he refuses to consult with counsel, if he comes forward and says, "I desire to plead guilty," it is our opinion that the court should ask, "Have you consulted with counsel?" and if he has not consulted with counsel we should force him to consult with counsel, and if he does not, do not accept his plea.

In addition to that we feel that the meaning and the effect of the plea of guilty which he proposes to take should be explained to him and that explanation should consist of a statement telling him that the plea amounts to an admission that he committed the crime that is charged against him, that it makes conviction mandatory, and that he should be told the sentence which can be imposed upon him if he admits doing the acts which are charged against him.

If he refuses, if he does not want to take the plea under those circumstances, or if he wants to make the plea and will not conform to those circumstances which are to make sure that he understands what he is doing, then, the plea should not be accepted.

We feel that is a procedure which will give an added amount of protection to the innumerable cases where pleas of guilty are taken, particularly among the younger men.

I think it would have the added advantage of settling once and for all that he is the man who did what he is charged with doing and we would be relieved thereafter of the continually complaint of accused that they did not understand what they were doing when they took their plea.

In addition to that, we would have the colloquy between the court and the accused at the taking of the plea and the record transcribed verbatim and not just have a form which is printed and says the accused was informed of his rights.

Mr. BROOKS. Does this contemplate a plea of nolle contendere?

Mr. LARKIN. No, sir, it does not.

Mr. BROOKS. That is not a proper plea in a court martial?

Mr. LARKIN. That is right, Mr. Chairman; I do not know of any such plea.

Mr. ELSTON. What is meant by the statement, "irregular pleading"?

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Mr. LARKIN. I think that would cover a pleading where a man says guilty, but I want to make an explanation.

Mr. ELSTON. There is no provision in the military courts for the filing of a demurrer, a plea in abatement, a motion to quash the charges, or anything of that sort, is there?

Mr. LARKIN. No, sir: There is no provision for special pleas. A motion practice is provided and the regulations spell out the different kinds of motions which can be made.

Again in the commentary on this article, which will be a part of the record, we have spelled out the procedures for such motions as they are now contained in the Army Manual so that the drafters of the new manual will understand that it is part of the legislative history of this provision here, and that this motion practice as it is now provided in Army courts martial will be continued. As I say, it is on page 65 of this commentary.

Mr. RIVERS. You mean the proper motions to make?

Mr. LARKIN. That is right.

Mr. RIVERS. Corresponding to the ones that Mr. Elston has mentioned?

Mr. LARKIN. That is right.

Mr. RIVERS. Can you make that more definite and certain?

Colonel DINSMORE. You will recall they have abolished all of these special pleas in the Federal courts and provided that the same points shall be raised by motion.

Mr. RIVERS. I see.

Colonel DINSMORE. The reason being that the pleas became so technical that a lot of the lawyers did not understand them themselves, perhaps, and we are following exactly the Federal rules of procedure both in the present manual and in this code.

Mr. BROOKS. That all preliminary pleas should be by motion?

Colonel DINSMORE. Yes, sir, that is right, sir.

Mr. GAVIN. Supposing a boy is accused of a crime now and defense counsel is appointed, how much defense does this counsel actually give this boy? Supposing the case is a bad one, does he indicate to him that he should plead guilty or he should not plead guilty, and when he goes into court how much defense does he give him; that is what I would like to know from somebody.

Mr. ELSTON. The code that we are drafting provides that counsel must be qualified counsel, that they must be admitted to practice in the district court of the United States or the supreme court of one of the States of the Union, and it is assumed that if they have been admitted to practice in one of those courts and approved by a Judge Advocate General that they are qualified counsel.

Mr. BROOKS. Furthermore, it provides that he may have assistant counsel in certain cases.

Mr. ELSTON. And if he is not satisfied with any counsel that might be selected for him, he can employ his own counsel.

Mr. GAVIN. Does he know that, is he apprised of that fact?

Mr. ELSTON. We have put in here that they must notify him of his rights.

Mr. RIVERS. The way it is now a good deal depends on who has charge of his fitness reports.

Mr. BROOKS. In many respects he has a greater amount of protection than in civil courts.

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Mr. SMART. In line 14, as subsection (b) is now written it says—

A plea of guilty by the accused shall not be received in a capital case.

A man may be charged with a capital offense and in the same charges and specifications be charged with a noncapital offense, and this language would prevent taking a plea of guilty in the noncapital offense. At that point I would delete the words "in a capital case" and substitute "to an offense for which the death penalty may be adjudged."

Mr. LARKIN. I will certainly be content with the committee's decision on that. I can see Mr. Smart's point, and we considered it ourselves. It is one of these little technical things that sometimes causes difficulty. As it reads it is perfectly true that the circumstances set forth may happen, if a man was charged with murder and decided or wished to plead guilty of manslaughter, the lesser included offense, if you will, it would appear by this language that he could not make such a plea.

We tried to take care of that by spelling out in the commentary that we did not intend that.

The reason we did not use the word "offense" is because it brings up the same problem in the special court. Now, it does not happen very often, but, of course, a special court can try capital cases or a capital offense.

When they do try a capital offense, of course, they cannot impose more than the jurisdiction allows them to impose. They cannot impose more than 6 months, which, of course, operates to the favor of the accused. If you say a plea of guilty shall not be received in a capital offense then, of course, he could not plead guilty to a capital offense tried by a special court, even though he cannot get more than 6 months there, so it is a question of which word makes it clearer.

I will be content with either word. That is not arguing with Mr. Smart, but just trying to explain our thought on the matter.

Mr. SMART. You might go farther and say, then, "except as provided in article 19," which prescribes the jurisdiction of special courts martial. That would certainly clarify it beyond any doubt.

Mr. LARKIN. That is right.

Mr. BROOKS. Is there any further discussion of that? In other words, change it to read:

A plea of guilty by the accused shall not be received to an offense for which the death penalty may be adjudged.

You have heard the suggested amendment. All in favor of the amendment signify by saying "aye," and all opposed "no."

The ayes seem to have it.

Is there any further discussion of this article?

Mr. DEGRAFFENRIED. Does article 19 refer to the jurisdiction of special courts martial?

Mr. LARKIN. Yes.

Mr. DEGRAFFENRIED. Suppose he was to be tried before a general court martial, could he not still plead guilty to a lesser offense than the one charged?

Mr. LARKIN. We hope he could. I think using the word "offense" is all right there because it would be the lesser included offense.

Mr. BROOKS. This as originally written was intended to cover a case like we had in Chicago, the Loeb case, where the defendants pleaded guilty and threw themselves on the mercy of the court.

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Mr. LARKIN. This is new in the statute, but it has been a regulation of the services for years. The intention is that you do not permit a man in a case in which the death penalty is possible to plead guilty, which is uniform practice in civil courts. You just do not let a man plead himself into the death penalty.

Mr. ELSTON. Some States permit him to plead guilty, but they require that evidence be taken to determine the degree of homicide involved.

Mr. BROOKS. If there is no further discussion of this article, we will proceed to article 46.

Mr. SMART (reading):

ART. 46. Opportunity to obtain witnesses and other evidence.

The trial counsel, defense counsel, and the court martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, its Territories, and possessions.

References: A. W. 22; A. G. N. article 42 (b); proposed A. G. N. article 35.

Commentary: This article is based on A. W. 22 and proposed A. G. N., article 35. The first sentence of the article is intended to insure equality between the parties in securing witnesses. It is felt appropriate to leave the mechanical details as to the issuance of process to regulation.

Mr. BROOKS. Is there any discussion of that? If there is no discussion, we will proceed. That is substantially the law as it has been?

Mr. LARKIN. That is right. It preserves the addition to the old article 22 which the Elston bill provided. We have reworded it a little more. You gentlemen in the last session added the provision that witnesses for the defense shall be subpenaed upon the request of the defense counsel through process issued by the trial judge advocate. That was in addition to the previous provision. We have reworded it by saying "shall have equal opportunity to obtain witnesses and other evidence."

We go a little further; but in essence it is the same as the provision now in effect.

Mr. GAVIN. Supposing that in an emergency some of the witnesses were in other parts of the world other than the United States, its Territories, and possessions, how would you bring those witnesses back to testify in a trial that may be held here in the United States?

Mr. LARKIN. Well, you would bring them back if you could under any circumstances, but if it were physically impossible you just could not do it. If it turns out that they are most material to the issue or that they are the only witnesses to the case, why, you just could not try the case without them.

Mr. ELSTON. If you could not bring them back, you could certainly take their depositions.

Mr. LARKIN. That is possible.

Mr. BROOKS. And the defendant would have the same opportunity that the prosecution has?

Mr. LARKIN. That is the way we have tried to spell it out in here, yes, sir.

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Mr. RIVERS. There would certainly be ground for a motion to postpone.

Mr. LARKIN. Yes, sir.

Mr. SMART. The defendant would actually have more opportunity in this respect than the prosecution would have because you will later find that the prosecution cannot take depositions in a capital offense case, whereas the defendants can.

Mr. BROOKS. In what article is that?

Mr. SMART. Article 49.

Mr. BROOKS. Article 49?

Mr. LARKIN. Yes, sir.

Mr. BROOKS. If there is no further discussion of article 46, it will stand adopted as read.

Gentlemen, it is high noon. If there is no objection we will adjourn until 1:30, and it is the thought of the chairman that, unless there is objection, we will run on until 4 o'clock and try to finish what we can. The committee stands adjourned until 1:30.

(Thereupon, the committee adjourned until 1:30 p. m.)

AFTERNOON SESSION

(The subcommittee reconvened, at 1:30 p. m.)

Mr. BROOKS. The subcommittee will come to order.

Mr. SMART (reading):

ART. 47. Refusal to appear or testify.

(a) Every person not subject to this code who—

(1) has been duly subpoenaed to appear as a witness before any court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such court, commission or board; and

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which such person may have been legally subpoenaed to produce:

shall be deemed guilty of an offense against the United States.

(b) Any person who commits an offense denounced by this Article shall be tried on information in a United States District Court or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, and jurisdiction is hereby conferred upon such courts for such purpose. Upon conviction, such persons shall be punished by a fine of not more than $500, or imprisonment for a period not exceeding six months, or both.

(c) It shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute any person violating this Article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

References: A. W. 23; A. G. N. article 42 (c); proposed A. G. N., article 35 (b).

Commentary: This article is derived from A. W. 23. Proposed A. G. N., article 35 (c) is similar. The proviso in A. W. 23 making certain offenses in title 18, U. S. C. applicable to proceedings before courts martial is omitted, since the language of title 18 includes the important offenses against military justice, such as perjury and bribery or judicial officer. (See title 18, U. S. C., secs. 206, 210, 1621, 1622 (1948).)

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Mr. BROOKS. That is the same as the Articles of War 23?

Mr. LARKIN. That is right, Mr. Chairman.

Mr. BROOKS. How about the Navy?

Mr. LARKIN. The Navy article 42 (c) is similar; and article 35 (b) of the proposed Navy bill in the eightieth session has a similar provision. You will note specifically that an offense of this character is not tried by court martial but by the United States courts It is an. adaptation of what has been in the law.

Mr. RIVERS. And he is tried on information?

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. Mr. Larkin, does that section 2 mean that in order to require him to come up to a hearing you have to either pay him or tender him the fees before he gets there? It says "has been duly paid or tendered the fees" and so forth.

Mr. LARKIN. I should say so.

Mr. DEGRAFFENRIED. Usually you just summon them to appear and then after they testify they pay them mileage and so forth?

Mr. LARKIN. Well, you see by virtue of having difficulty with civilian witnesses we are going to an extreme. If one is subpenaed and he says he will not come we will go further and say, "Here are the fees right now."

Mr. BROOKS. You have a different situation, also, when you get to this jurisdiction, from the State jurisdiction. Your distances are greater, and the expenses are greater.

Mr. LARKIN. That is right. A person might have a legitimate reason to refuse.

Mr. RIVERS. As the chairman says, that is absolutely right.

Mr. SMART. We had the same thing as far as the subpenas to Congress are concerned in the last Congress, when our committee had the subpena power and we had an appropriation to support that. The rule is that if we subpena witnesses here they may demand and must receive the round trip first class rail transportation plus at least 1 day of authorized Federal per diem. Otherwise they are under no obligation to appear.

Mr. RIVERS. That is fair.

Mr. SMART. That is fair, and this perpetuates that rule.

Mr. BROOKS. Mr. Gavin, article 47 was just read. There seems to be no controversy about it. It is a rule that has been in force for a long time. It is with reference to the enforced attendance of witnesses and provides for punishment in the Federal civilian courts.

Mr. SMART. This is for witnesses not subject to this code.

Mr. BROOKS. Yes.

Mr. GAVIN. I thank the gentleman for that explanation.

Mr. RIVERS. Also, it provides for payment before he gets there.

Mr. BROOKS. Is there any controversy about it?

If there is no objection to the article as read, we will approve it.

Mr. SMART (reading):

ART. 48. Contempts.

A court martial, provost court, or military commission may punish for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder. Such punishment shall not exceed confinement for 30 days or a fine of $100, or both.

References: A. W. 32; A. G. N. article 42 (a); proposed A. G. N. article 35.

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Commentary: This article is derived from A. W. 32. The proposed A. G. N. article 35 would require contempts by persons not subject to this code to be tried in civil courts. It is felt essential to the proper functioning of a court, however, that it have direct control over the conduct of persons appearing before it.

Mr. Chairman, I think that there are two things that should be clarified for the record here. One is that this section contemplates the right to punish for contempt civilians who may be testifying or appearing as counsel in a court-martial case. Secondly, while the article does not say so, it anticipates that the military court may punish summarily.

Mr. RIVERS. Civilians?

Mr. SMART. That is correct.

Mr. RIVERS. Not subject to it?

Mr. SMART. When civilians come before a court martial they must be bound by the same rules of decorum as the other people before it.

Mr. BROOKS. Is the Federal rule 30 days or 10 days?

Mr. LARKIN. I think it is 30. The present article of war from which this was drawn for 30 days. That is article of war 32. Also a $100 fine. It is exactly the same.

Mr. BROOKS. Well, it is substantially the same rule that you have in the Federal criminal courts?

Mr. LARKIN. And the same rule that we have in the Articles of War right now.

Mr. BROOKS. Yes.

Mr. LARKIN. It is designed to operate in the court's presence. If the court martial cannot conduct its proceedings in an orderly quiet way it just cannot get to the issue, and you cannot in a contemplative manner decide what is right and what is wrong. Unless it has the power to discipline those before it you may have the most erratic kind of proceedings, and the most disturbing circus atmosphere, as you very frequently have in some sensational civil cases. If the court cannot operate its own proceedings in a dignified manner its proceedings become intolerable.

Mr. BROOKS. Is there any appeal from this?

Mr. SMART. There is none. There is a limited punishing power and there is no appeal. It is a summary citation for contempt.

Mr. BROOKS. This is 30 days for each successive or each offense, plus the fine of $100?

Mr. LARKIN. I should say so.

Mr. RIVERS. Do we have the authority to write in this particular code any proviso for punishing civilians who interfere with a MP who is arresting someone subject to his jurisdiction?

Mr. LARKIN. No.

Mr. RIVERS. Would he have go go into a Federal court on information?

Mr. LARKIN. I would think so, obstructing justice or interfering with an officer in the performance of his duties.

Mr. RIVERS. In a State court or a Federal court? You see, a United States marshal has jurisdiction.

Mr. LARKIN. I do not know about the Federal court, in general.

Mr. RIVERS. There must be plenty of those cases already.

Mr. LARKIN. I think probably the jurisdiction provided in the State court is adequate for that purpose.

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Mr. BROOKS. I would like to ask one question. It is going back, and I think it has been covered, but I did not fully understand it. Exactly what is the definition of a provost court?

Mr. LARKIN. Well, I suppose the name itself is derived from the Provost Marshal's Department, which is generally the Department that controls the military police.

Mr. BROOKS. How does that differ from a court martial?

Mr. LARKIN. Well, a provost court, like other military commissions and tribunals which are usually used in occupied territories and which are the creatures of the occupying authority, is operated in accordance with whatever rules are prescribed for them. Many of the military or provost courts, for instance, that operate in occupied territories will follow, to a large extent, the court-martial procedures, but they may specifically apply the local law.

In many recent cases in occupied territory they have followed the procedures of court martial, but specifically they applied the German law. They are ad hoc special courts for a special purpose.

Mr. BROOKS. Are they not intended to cover the civilians?

Mr. LARKIN. Civilians who are not subject to the code.

Mr. BROOKS. Civilians who are not subject to the code. Is that right, Colonel?

Colonel DINSMORE. It is for the trial of civilians for the occupied territory.

Mr. SMART. I might add, if you will forgive the personal reference, that I was a provost court overseas appointed by virtue of the proclamations which gave General MacArthur the authority, which subsequently was delegated down to the Sixth Division. My jurisdiction was 5 years confinement or $5,000, either one or both. I sat alone as one judge and I tried nothing but civilians not subject to the Article of War.

Mr. RIVERS. I guess you gave them the limit?

Mr. SMART. Some of them.

Mr. BROOKS. In the light of that fact, gentlemen, do you want to approve this provision?

Mr. GAVIN. Let us go on.

Mr. BROOKS. Is there any objection to article 48?

There is no objection.

Mr. SMART. Do you want to revert to article 36 now that Mr. Elston is here, sir?

Mr. BROOKS. Yes, let us take up article 36.

Mr. SMART. In order to restate the issue, Mr. Chairman, may I briefly say that the question revolves around the use of the words, in lines 5 and 6 of page 32, "so far as he deems practicable."

The question which Mr. Elston placed was whereabouts in the military do we depart from Federal procedure.

I think Mr. Larkin is now prepared with specific facts to show that there are differences, which make these words necessary.

Mr. RIVERS. Were you not also supposed to fix up the problem of men?

Mr. SMART. Well, if you are going to delete those words it would be very simple. It is a question of keeping the words or deleting the words.

Mr. BROOKS. We will hear from Mr. Larkin.

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Mr. LARKIN. Since the committee considered this article the other day we have made a very brief comparison of what we think are the rules of evidence generally recognized in the trial of criminal cases in the United States courts with the general evidentiary problems that we face in courts martial. It is not a complete study or comparison by any means. We just have not had the time.

As mentioned by Colonel Dinsmore, one evidentiary principle that differs considerably is the one on judicial notice. If the phraseology here is deleted and the manual must apply the principles of law and rules of evidence generally recognized in the Federal courts, then the question arises on a problem of judicial notice whether the multitude of records that are kept by the military and the great number of official documents, or documents kept in the regular course of business, could be judicially noticed by virtue of the fact that they would not be entitled to judicial notice under the Federal rule in a Federal court.

For that reason judicial notice in the military is broader than the Federal court rule.

There is an added protection, however, in that when a court martial takes judicial notice of these records, there is, in accordance with the regulations, a provision that a copy of the regulation or the official paper is given to the court, so they are not taking judicial notice of a principle only, but of the specific language. There is a difference.

You have certain evidentiary rules for the authentication of foreign documents, for instance, in the Federal system which require that they be authenticated by consul before they become admissible. There is a lot of documentary evidence and printed material that would come before the military courts martial in an occupied area, or in a battle zone or close to one which you could not get authenticated by a consul. He is just not anywhere near where this court is held.

So if we were required to follow the Federal and were bound by it, we could not use the document unless it were authenticated by a consul.

The rule on searches and seizures, for instance, is not exactly the same as it is in a Federal court. It is, of course, applied where military personnel or their families are billeted in a home of their own, where a warrant would be required, but on camps, stations, and posts and so forth we do not follow the normal search and seizure. Frequently you could not find anybody to issue a warrant.

There are other problems. For instance, there is the question of admissibility of medical records. I think, as a matter of fact, there is a difference in the admissibility of medical records in the different circuit courts.

We would be faced, in other words, if that language is deleted, and the manual by this article requires that the principles and laws of evidence generally recognized by adopted, with following rules that are actually not practicable.

In addition, we would be faced with this problem: We would try to set out in the manual what we think is generally recognized. Of course, we are going to try to do that anyway. But the question is, if we are forced to set out what is generally recognized there will always be a question, and an accused might use this very neatly by saying, "I do not believe that is the generally recognized rule in the Federal courts." Then we would be faced with the question of whether

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it is or is not. You would have to poll each circuit court and say that three hold one way and one the other way, and, therefore, it is generally recognized. If it were two and two, I do not know what would be generally recognized.

I think the laws of evidence as spelled out in the manual would always be subject to a collateral attack.

If it is true that despite our good faith in writing them it turns out that some court construes our understanding of what is generally recognized to be wrong, then I should think that the accused would have a right to a writ of habeas corpus, and it might cause a great deal of trouble.

Mr. RIVERS. What if the President should consider it practicable to permit the use of tapped conversations on telephones? He could do so under this.

Mr. LARKIN. Taking an extreme case like that——

Mr. RIVERS. It would not be extreme on a post, where it comes from a central exchange.

Mr. LARKIN. No. I say that we could take a case which I would think would be extreme on the President's part, to make such a regulation.

Mr. RIVERS. He would have the authority, would you not say, under this?

Mr. LARKIN. He perhaps would, except that he would then not be following what is generally recognized in the trial of criminal cases in the United States court because section 605 of the Communications Act of 1934 specifically prohibits the admissibility of such evidence in a Federal court. That would be a clear misinterpretation on his part; and actually the manual is to come to Congress. If the services have in the past written a manual which has been approved and promulgated by the President which does generally follow Federal law, I think they can be trusted to do so in the future, in addition to the fact that the manual will come to Congress.

Now, Congress can object to any rule of evidence in the manual by saying, "We do not think this is the generally recognized Federal rule, and we want you to change it."

I think it is better to do it that way than to strike out the discretionary language and put these rules in a strait-jacket.

Now, there may be other important differences. As I say, we just have not had time to compare each and every Federal rule and try to understand what is the generally recognized one. That is one of the difficulties.

Mr. ELSTON. Mr. Chairman, I did not object to it before. I said I had an open mind on it, but I thought we ought to be advised.

Mr. LARKIN. Surely.

Mr. ELSTON. As to how far they might go under that language. It seems to me, in view of Mr. Larkin's explanation that the words could hardly be deleted. With his explanation in the record—I assume the manual will more or less indicate the same thing—if that is done, perhaps no harm will be done, particularly since the rules have to be reported to Congress.

Mr. LARKIN. Yes.

Mr. ELSTON. Congress will have an opportunity to pass on them later anyway.

Mr. LARKIN. That is right.

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Mr. BROOKS. I think the time was well spent in the investigation; and Mr. Larkin's explanation will certainly help.

Mr. GAVIN. Just one thing.

You mentioned in your statement about questioning the admissibility of hospital records in a case. How would that come about, that they would question the admissibility of hospital records?

Mr. LARKIN. Well, a hospital record, or a record of autopsy, for instance, may be hearsay, if the medical examiner who did the autopsy is available as a witness.

Then you have the fact that the autopsy record is frequently a combination of findings of fact, what the personal physical condition is, temperature and so forth, and also may include opinions and diagnoses.

There are a number of evidentiary problems in connection with it in addition to the possible problem of the hearsay rule.

As a result, to attempt to pick what you think is the generally recognized one is an almost impossible task, and almost anybody's guess.

Mr. GAVIN. Suppose that a boy had a bad beating and was sent to the hospital and the records proved that he received a bad beating. Could the court deny the admission of those records into the testimony or trial?

Mr. LARKIN. Well, they conceivably could deny that portion of the record which states that in the doctor's opinion such and such happened, if the doctor is available to come in and testify himself so that he can be cross-examined.

Mr. ELSTON. The same rule would apply to the defendant as would apply to the prosecution.

Mr. LARKIN. Exactly so. What I was trying to point out was the difficulty of picking what is supposed to be the generally recognized rule. I am frank to say I just do not know what it is.

Mr. ELSTON. Ordinarily, hospital records and such are admissible if they are original records.

Mr. LARKIN. That is right.

Mr. ELSTON. And if the opinions expressed are the opinions of experts like doctors.

Mr. LARKIN. That is right.

Mr. ELSTON. But if it is an opinion of some nurse or some other person appearing in the record—if she were not qualified as an expert—then the court might exclude that.

Mr. LARKIN. That is right. It depends on the circumstances of what is in the record. All kinds of information seems to find its way into records of this kind.

Mr. ELSTON. I can see where it might be just as much to the advantage of the defendant as it is to the prosecution to bring in records of that kind.

Mr. LARKIN. Yes, there is no question about it.

Mr. BROOKS. If there is no further question about this article, we will go on to the next article.

Mr. SMART (reading):

ART. 49. Depositions.

(a) At any time after charges have been signed as provided in article 30, any party may take oral or written depositions unless an authority competent to convene a court martial for the trial of such charges forbids it for good cause. If a

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deposition is to be taken before charges are referred for trial, such an authority may designate officers to represent the prosecution and the defense and may authorize such officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other party, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides, or is beyond the State, Territory, or District in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing; or

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing, or

(3) that the present whereabouts of the witness is unknown.

(e) Testimony by deposition may be adduced by the defense in capital cases.

(f) A deposition may be read in evidence in any case in which the death penalty is authorized by law but is not mandatory, whenever the convening authority shall have directed that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court martial.

References: A. W. 25, 26; proposed A. G. N., article 36.

Commentary: Subdivision (a) is derived from the third proviso of A. W. 25. The first sentence is new in that it permits any party to take a deposition after charges are signed unless an officer with authority to convene a court martial for the trial of such charges forbids it for good cause. When such an authority is to designate officers to take depositions, he should consult the accused prior to designating an officer to represent the accused, or if the accused has counsel representing him in other pretrial matters, such counsel should be designated to represent the accused if available.

Subdivision (b) conforms to present practice in all services.

Subdivision (c) is derived from A. W. 26 and conforms to present Navy practice.

Subdivision (d) is derived from A. W. 25 and proposed A. G. N., article 26. The admissibility of a deposition is made dependent upon the need for its use at the time of trial. The same rules of evidence apply to testimony in depositions as apply to oral testimony.

Subdivisions (e) and (f) are derived from A. W. 25. The proposed A. G. N. does not contain similar provisions.

Mr. BROOKS. That all deals with depositions. How does this differ from the present articles of war 25 and 26 which we have now?

Mr. LARKIN. I think only in the first sentence, Mr. Chairman, of (a). It differs in this manner: The Elston bill added to the Articles of War the proviso that at any time after the charges have been signed as provided in article 46, and before the charges have been referred for trial, any authority competent to appoint a court martial for trial may designate officers to represent the prosecution.

We have gone a little bit further and have said that while he, of course, may still do so, that a deposition may be taken unless he forbids it for good cause. So it is just a rephraseology of the same provision from another viewpoint. It permits a little more freedom of action, if you will, than there has been, but it preserves what has

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been in the law as to depositions, and what was added last year by the Congress.

Mr. BROOKS. Are there any questions on this article, gentlemen?

Mr. ELSTON. You did not take anything away from the law that was written last year?

Mr. LARKIN. No, sir. You added, last year, if you will recall, in the last proviso of article 25, that notion.

Mr. ELSTON. Article 25 last year?

Mr. LARKIN. Yes.

Mr. BROOKS. Subsection (a).

Mr. ELSTON. At one place we speak about giving notice to every other party, and at another place, line 11 page 41, we just say notice to "the other party." It occurred to me that the language should be the same so that all defendants will be notified.

Mr. SMART. That is on page 41 of the bill. There is subsection (b) which states:

> The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

Then in subsection (d) you say:

> A duly authenticated deposition taken upon reasonable notice to the other party, so far as otherwise admissible under the rules of evidence, may be read into evidence—

I am sure you mean the same thing in both places.

Mr. LARKIN. Yes.

Mr. RIVERS. Let us put it in.

Colonel CURRY. When you take it, you know who all the other parties are, but if he is not heard then, it means you must have given notice to the party against whom you are using it. If it is against someone where there isn't any evidence, you could stymie the procedure.

Mr. ELSTON. Suppose you have a case where you have codefendants and they only seek to use the deposition against one, but the codefendants are all tried together? It could be very prejudicial to the others.

Colonel CURRY. In which place the others can object. Either of them can object if he did not have notice. Suppose that one man has come in since it was taken. It could not be used against him.

Mr. ELSTON. If you have to notify all the codefendants or their counsel, then they will have an opportunity to object. It may be too late at the trial. At the trial they read the deposition and the damage is done. You can strike out the evidence and tell the jury to disregard it, but if you have done so, it may not do too much good. I have never had a whole lot of faith in that provision. I have seen it work both ways. There were times when I thought it was not so bad.

Mr. BROOKS. In this case what would happen? I believe you would take the deposition and check it over to see whether or not there was anything wrong, would you not? You would rule on the question of the admissibility of that deposition?

Mr. LARKIN. The law officer in the court would rule.

Mr. BROOKS. The law officer?

Mr. LARKIN. Yes. It would have to be a deposition whose admissibility is based on the general rules of admissibility, plus the fact that it is a deposition of a person in one of the three categories in subsection (d).

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Mr. BROOKS. Under our theory, as presently set forth in the bill, e law officer would not sit with the court when they decided on guilt innocence. Therefore, he might withhold that deposition from the owledge of the court.

Mr. LARKIN. What would happen, I should say, is that the deposi- on is taken before trial generally, or even when it starts, at some stant place. Then when it is offered by either party on the trial it scrutinized for admissibility based on all these conditions and neral rules of admissibility.

Mr. BROOKS. Why should the court scrutinize it for reasons of missibility when the law officer will determine whether it is admis- ble?

Mr. LARKIN. I think I said the law officer.

Mr. BROOKS. If the law officer determines that then why should e court ever see the deposition which is inadmissible?

Mr. SMART. It should not.

Mr. BROOKS. Is that not a superior rule, really, that the supreme urts have? In a jury trial the party offering the deposition always ranges to get it in before that jury if he can.

Mr. LARKIN. He may, but frequently an alert judge or an alert w officer looks at it first. He listens to the objections, and may en conduct an examination on the manner in which it was taken nd entertain objections to what might be hearsay in it and everything se.

Mr. BROOKS. Of course, he says to the jury, "You can retire," but a case like this the law officer will dispose of the matter. It seems me it could be disposed of without reaching the court.

Mr. LARKIN. I should think it would be.

Mr. SMART. That would become an interlocutory question and it ould be up to the law member to rule; and his ruling would be final. here would be no occasion which I can foresee whereby a general ourt-martial court would be authorized to look at any part of that eposition if the law member, as a matter of law, ruled it was not dmissible.

Mr. LARKIN. I think it would be very similar to a confession. The rosecution can offer a confession in evidence, and the accused objects the introduction of the confession on the ground that it was invol- ntary or untruthful. That would require a ruling of law at that oint, or perhaps even the taking of testimony as to the conditions nder which it was taken in order to determine its voluntary char- cter.

In the same way the admissibility of depositions, subject to the ob- ection by the accused, or either party, would be scrutinized before it specifically put in.

Mr. BROOKS. Then if the law officer rules it inadmissible and the ourt insists on seeing what is in it, the question might arise as to hether that is reversible error.

Mr. LARKIN. That is right.

Mr. SMART. Of course, you would have this exception: You are asing your conversation on the basis that these depositions are used nly by general courts martial. As a matter of fact, they are used y special courts where you may not have a law officer. The president f the court, in that event, is charged with the duty of determining natters of law, and he will certainly look at it.

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The rule we are discussing would apply only in the general court-martial cases.

Mr. DEGRAFFENRIED. It will only do good in the general court-martial cases. It might apply in the others.

Mr. LARKIN. That is right.

Mr. BROOKS. They are, of course, the most serious cases.

Mr. LARKIN. That is right.

Mr. ELSTON. I am wondering why you suggested that depositions cannot be taken by the prosecution in capital cases.

Mr. LARKIN. Well, that is a rule that has existed for some time, that you cannot use a deposition against the defendant in a capital case. He can use it in a capital case for his own defense. It is just an added protection to the accused, that is all.

Mr. ELSTON. You certainly have given the defendant all the best of it there.

Mr. LARKIN. That is right.

Mr. ELSTON. On page 42, where you say, "Testimony by deposition may be adduced by the defense in capital cases" do you not think you ought to make it clear that if the defendant takes a deposition the prosecution shall have the right to cross-examine and that that testimony is admissible? It might be interpreted to mean that only the defense testimony is admissible.

Mr. LARKIN. I think, perhaps, Mr. Elston, that that comment applies to (e) and (f). I do not think it is very clear. I think, perhaps, we ought to amend (e) and (f) by saying at least "subject to the requirements of subsection (d) above, testimony by deposition may be introduced by the defense" so that they just cannot automatically introduce anything. That would be so that this is not construed that they automatically introduce it when the witnesses are available. At least, that was our intention, that it is limited by all these conditions set forth in subsection (d).

I think the way we wrote it here it is not too clear. I think you have brought up a good point, and I think it would clarify it if we start it by saying, "subject to the requirements of subsection (d) of this article."

Then depositions, when they are used by the defense in capital cases, can only be used if those conditions are satisfied. Is that not your idea?

Mr. ELSTON. Yes, but I am just wondering if (d) goes far enough. Does (d) go far enough to make it clear that if a deposition is taken by the defendant the prosecution shall have the right to cross-examine and the cross-examination, as well as the direct examination, is admissible.

Mr. LARKIN. Well, it would depend, I suppose, on whether all of that is in the deposition, depending upon whether written interrogatories are used, or not. If you have a deposition taken by officers who are questioning and cross-examining, it would be contained. If it is taken by interrogatories of which are settled by counsel and are sent to a distance, and the questions are just put and the answers recorded by an appropriate official, you would not have your cross-examination but you would, of course, have the settlement in advance by both counsel and the phrasing of the questions.

Mr. ELSTON. You would have a rather unusual situation if the defense could produce tsetimony and the prosecution could not refute it by the same witnesses.

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The way this subsection is written it might be interpreted that way. "Testimony by deposition may be adduced by the defense in capital cases," period. You do not go on and say—

but if depositions are adduced by the defense in capital cases the prosecution shall have the right to cross-examine such witnesses and testimony adduced on such cross-examination is also admissible.

Mr. LARKIN. Cross-examination that is to be perpetuated is the cross-examination taken at the time of the deposition or thereafter? I just do not follow you.

Mr. ELSTON. When you take a deposition the accused has the right to be present in person and with counsel. If it is taken orally and not by way of interrogatories both sides can examine the witness. Now, then, the reporter is present and he takes down the testimony. If the defense can examine the witness and use that testimony then it ought to be clear that the prosecution can cross-examine the same witness and use that cross-examination.

Mr. LARKIN. What you are saying is that the whole deposition must go in?

Mr. ELSTON. Yes.

Mr. LARKIN. I would agree with that, certainly.

Mr. SMART. I think that is the intent of it, that any part of the deposition, be it direct or cross-examination, if the deposition is offered by the defendant in his own behalf, would certainly be admissible.

Mr. LARKIN. It is further drawn to my attention that under the Army manual for courts martial now the principle which you have just enunciated is spelled out.

If I may read it, from section 131 of the manual for courts martial, it says:

Testimony taken by deposition may be introduced for the defense in capital cases if otherwise admissible. If the defense calls for such testimony in a capital case the deponent may be cross-examined by written interrogatories or otherwise as fully as a witness in a case not capital.

The same idea was intended, certainly.

Mr. ELSTON. I did not know it was in there. That is exactly what ought to be there.

Mr. LARKIN. That is right. I think with that legislative history and the amendment that, in addition, it is subject to these conditions of (d), we have nailed it down.

Mr. BROOKS. How would you phrase your amendment there? Would you tie it onto (e)?

Mr. SMART. Page 42 at line 3, beginning with subsection (e), insert the words "Subject to the requirements of subsection (d)." That is immediately before the word "testimony."

Do the same thing in line 5 at the beginning of subsection (f), and immediately preceding the word "A" insert "Subject to the requirements of subsection (d)."

Mr. BROOKS. "Subsection (d) of this article."

Mr. LARKIN. That is right.

Mr. RIVERS. The first is (e), "subject to" so and so. You start off with "subject to"?

Mr. LARKIN. That is right.

Mr. SMART. "Subject to the requirements of subsection (d) of this article."

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Mr. RIVERS. And the other is "subject to" also?

Mr. SMART. The same wording in subsection (f) at the beginning of the section.

Mr. BROOKS. You have heard the amendments, gentlemen. If there is no objection to them, they will stand adopted.

May I ask you this question, Mr. Larkin: Under small 2 subsection (d) what is meant by "military necessity?"

Mr. LARKIN. I take it that covers the situation where there is a witness subject to the code, or military personnel who are on such an important military mission, or by virtue of military operations, that it is impossible in performing their duty to also be at the place of the trial. In that case it is permitted that their deposition be read at the trial.

Mr. BROOKS. Of course, that could be badly abused if they wanted to.

Mr. LARKIN. I suppose it is a question of the good faith in operating or administering it.

Mr. BROOKS. Is there any further discussion? Are you ready to approve it?

All in favor of the article say "aye."

(General response of "aye.")

Mr. BROOKS. Opposed "no."

(No response.)

Mr. BROOKS. Article 49 is approved.

Mr. Smart, we will take up article 50.

Mr. SMART [reading]:

ART. 50. Admissibility of records of courts of inquiry.

(a) In any case not capital and not extending to the dismissal of an officer, the sworn testimony, contained in the duly authenticated record of proceeding of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible, be read in evidence by any party before a court martial or military commission if the accused was a party and was accorded the rights of an accused when before the court of inquiry or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of an officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

References: A. W. 27; A. G. N. article 60; proposed A. G. N. article 44.

Commentary: This article is derived from A. W. 27 and is similar to present Navy practice. As to parties before courts of inquiry, see article 135 (c).

The effect of the use of the words "not capital and not extending to the dismissal of an officer" is that if the prosecution uses the record of a court of inquiry to prove part of the allegations in one specification, neither death nor dismissal may be adjudged as a result of a conviction under that specification. The introduction of the record of a court of inquiry by the defense shall not affect the punishment which may be adjudged.

Mr. BROOKS. Why do you put in there the question of the dismissal of an officer?

Mr. LARKIN. Well, now, this is similar to depositions except that it refers to the record that is taken in a court of inquiry. So far as those records are concerned, traditionally in the case of dismissal of

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an officer before a court martial, as well as a capital case, that provision has obtained. To say that it is tradition is no answer, and I do not know why, from a tradition standpoint.

However, I assume it is because the courts of inquiry are used very frequently, particularly in the Navy, and this does stem, to some extent, from present Navy law.

As you know, in a large number of circumstances in which property is damaged or the conduct of an officer comes under inquiry, a court of inquiry is held. It is a fact-finding body which makes a finding but cannot return a verdict of guilty, nor impose punishment. However, since it is used very frequently in connection with officers, I assume for the protection of officers who are thereafter tried, based on what is uncovered in the court of inquiry, the added protection has been in the law. It has been in for a long time.

Now there may be other and better explanations.

Do you know the origin, Captain Woods, other than that?

Captain WOODS. No. I think you have explained it very well. The thought was that the court of inquiry is a court of very considerable dignity and powers, which has subpena powers and sits under oath. There is every reason to believe that the testimony elicited by that court, both sides being represented, is sound testimony. Still I would think that there may have been some limitation on the ability to bring out information from the particular witnesses, or the scope of the examination.

Mr. BROOKS. I raise the question as to why you left out enlisted men.

Captain WOODS. I think Mr. Larkin has touched that point very well, Mr. Chairman. The enlisted-man situation is usually investigated by a board of investigation or an investigating officer under our past practice, not under oath, and the information elicited is not so sound.

Mr. LARKIN. This applies to enlisted men, of course, in capital cases, as do depositions.

Colonel DINSMORE. Mr. Chairman, I think the effect ought to be emphasized, that these courts of inquiry concern themselves almost exclusively, if not entirely exclusively, with officers' cases.

Mr. RIVERS. For negligence and the like?

Colonel DINSMORE. Yes, sir.

Mr. BROOKS. Such testimony would not be available in cases where enlisted men were accused?

Colonel DINSMORE. You would not have a court of inquiry in that case, Mr. Chairman.

Mr. RIVERS. Does a court of inquiry, for instance, follow such a case as I notice by the newspaper, where a destroyer ran over a sub here in the Pacific right off of California a few days ago? Would that follow, unless there would be evidence of negligence or gross negligence?

Captain WOODS. It will amost always have a board of investigation, at least. If there is death involved, and a serious question as to the responsibility, there will be a court of inquiry.

Mr. RIVERS. I see.

Mr. BROOKS. Is there any further discussion?

Mr. ELSTON. I have noticed a couple of things about which we might raise some question.

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For example, a court of inquiry does not necessarily have to extend to the same matter that resulted in the charges against the accused. It would mean that any court of inquiry could be concerned where he was present. They could be making an inquiry into a general subject, and later on the accused might be charged with some particular offense that he was not charged with at the time of the inquiry.

Under this section it could be introduced against him if the witness was not otherwise available, and even though he took no part in the inquiry other than just being present.

Mr. LARKIN. If the language is susceptible to that it is unfortunate, because we specifically did not intend that, Mr. Elston. We intended that the courts of inquiry records and there admissibility in a trial should only apply where the same issue is presented on the trial as the man was confronted with in the court of inquiry, and only under the circumstances where he was a party to the court of inquiry and had counsel and was accorded the rights of an accused before the court of inquiry.

It was our notion that you should read that in such a way that it is limited to the same issue.

Mr. ELSTON. I think that ought to be spelled out in the article, "where the same issue was involved."

Mr. LARKIN. Yes.

Mr. ELSTON. Should there not also be a notation that the record of the court of inquiry is still subject to the rules of evidence; and should we not begin that sentence with words like this, "So far as otherwise admissible under the rules of evidence in any case not capital," and so forth?

Mr. LARKIN. In the fifth line of subsection (a), line 16, we say "may if otherwise acceptable," which is just that idea.

Mr. BROOKS. "Otherwise admissible?"

Mr. LARKIN. "Otherwise admissible."

Mr. ELSTON. Let us say "under the rules of evidence."

Mr. LARKIN. All right. That is certainly what we meant.

Mr. BROOKS. Would that not cover both objections, if you would say "otherwise admissible" rather than how you worded it?

Mr. ELSTON. That covers it. That is the same language.

Mr. BROOKS. It will cover both cases where the issues are not identical.

Mr. LARKIN. I think that is perhaps so.

Mr. ELSTON. I think you ought to be clear and say, "where the same issue is involved."

Mr. LARKIN. As a matter of practice, that is the controlling feature of admissibility at this time. Certainly, for that reason, we would have no objection to spelling it out and making it completely clear.

Mr. BROOKS. Yes.

Mr. LARKIN. Naval Courts and Boards I think in a little different language says just the same thing as that, and I might read from section 734, subsection (c):

> If the rights of a defendant be not accorded when they should be, the court of inquiry or investigation, so far as concerns the person denied his rights, will be held of no evidential effect.

Then in italics it says:

> This is one of the most important rules to be observed.

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That just further confirms the same idea you have, to leave it to Mr. Smart and myself to try to work out this language.

Mr. ELSTON. Right after the word "admissible" you could simply put "if otherwise admissible and involving the same issue."

In line 16 it says, "if otherwise admissible." I suggest you simply add the words, "under the rules of evidence."

Mr. LARKIN. And involving the same issue.

Mr. ELSTON. That may go somewhere else.

Mr. LARKIN. That is my thought, yes, that that may go in somewhere else.

Mr. ELSTON. For instance, in line 18, "if the accused was a party and if the same issue was involved," or something of that sort.

Mr. LARKIN. That is right.

Mr. ELSTON. I suggest that we leave it to Mr. Smart and Mr. Larkin to take it up together and work it out.

Mr. BROOKS. Are there any further suggestions in regard to article 50?

If not, we will approve it as written, subject to the reservation that we just made.

Article 51.

Mr. SMART (reading):

ART. 51. Voting and rulings.

(a) Voting by members of a general or special court martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The law officer of a general court martial and the president of a special court martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of accused's sanity, shall be final and shall constitute the ruling of the court; but the law officer may change any such ruling at any time during the trial. Unless such ruling be final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in article 52, viva voce, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general court martial and the president of a special court martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted.

(3) that if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no such doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the Government.

References: A. W. 31; proposed A. G. N., article 24.

Commentary: This article is derived from A. W. 31. The provision of A. W. 31 allowing the law officer to consult with the court before making a ruling is deleted. In subdivision (c) the law officer and the president of a special court martial are required to instruct the court as to the elements of the offense in addition to those matters specified in A. W. 31.

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The proposed A. G. N. does not require a secret written ballot, but does require the law officer to instruct the court as to the elements of the offense.

Mr. ELSTON. Do you not think that wording should be, "may be in a lower degree," instead of "must"? That is mandatory, and under that you would have to find him guilty of some offense.

Mr. LARKIN. Of which there is no reasonable doubt.

Mr. SMART. If there is a reasonable doubt as to the greater offense, but there is no doubt as to the lesser included offense.

Mr. LARKIN. If there is a reasonable doubt at all he must be acquitted of the offense. If there is a reasonable doubt as to the degree of guilt, then the finding must be in a lower degree, of which there is no reasonable doubt.

Mr. ELSTON. Yes; but suppose that all of the elements of the included offense are not established?

Mr. LARKIN. Then there is a reasonable doubt, or at least, there is not even a prima facie case.

Mr. BROOKS. The only thing I think in reference to that, along the line of Mr. Elston's idea is whether or not we should add after the word "doubt," which is next to the last word in the paragraph, the two words "of guilt," so to that it would read, "the finding must be in a lower degree as to which there is no such doubt of guilt."

Mr. ELSTON. Or, "if the elements of such lower degree offense have been established beyond a reasonable degree of doubt."

Mr. LARKIN. You can switch it either way to meet that.

Mr. DEGRAFFENRIED. "Shall have been established by the evidence beyond a reasonable doubt."

Mr. LARKIN. Actually this is language we took intact from Public Law 759. (c) (1), (2), (3), and (4) were all added to the law by Congress last year, and we have taken it as such.

Mr. ELSTON. I will admit that it is rather technical, but the whole subject is technical.

Mr. LARKIN. That is right.

Mr. ELSTON. And if you think we are technical, wait until we get out on the floor.

Mr. LARKIN. I was just pointing out what a good draftsman you are, Mr. Elston.

Mr. BROOKS. I cannot imagine a court misconstruing subsection (3).

Mr. ELSTON. No; I do not believe so, but it just occurred to me that when you commence to tell somebody that they must find someone guilty that may influence them.

Mr. LARKIN. Yes, unless you understand the meaning. At first blush it may seem to be the wrong way to do it. The idea taken as a whole certainly is the way it should be.

Mr. DEGRAFFENRIED. It seems to me that if they really believe, from the evidence, beyond a reasonable doubt that he is guilty it is their duty to find him guilty.

Mr. BROOKS. For the purpose of the record, Mr. Smart, why is the vote beginning with the junior member of the court?

Mr. SMART. Well, they have to have a so-called leg-boy and it is always the junior member who does that. All that means is that he gathers up the votes and looks at them, and then the president looks at them, and the court confirms the count of the junior member.

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Mr. ELSTON. Is there not another reason for that, if the senior officer votes first there is always the possibility the juniors may follow suit?

Mr. SMART. Well, they vote in secret ballot.

Mr. LARKIN. It says "shall be by secret ballot."

Mr. RIVERS. It does not say that here.

Mr. SMART. Yes, you will find it in article 51 (a).

Mr. BROOKS. I suppose that it is just historical there. In 51 (a) you say the junior member shall in each case count the votes.

Mr. LARKIN. He does not vote first or make known his vote, if voting by secret ballot.

Mr. RIVERS. (b) deals with interlocutary questions?

Mr. LARKIN. That is right, it deals with interlocutory questions.

Mr. BROOKS. What about (b)?

Mr. RIVERS. He wants to get started off so he will not influence anybody but himself.

Mr. LARKIN. Do you have a question on (b), Mr. Chairman?

Mr. BROOKS. Yes, in reference to the junior member voting first. I would like to have the record show the reason for that.

Mr. LARKIN. There, of course, the vote is on the two or three legal questions on which the court can vote at all. It is limited to that. On the question of the junior member voting first, it is so he can express himself independently without having heard what the votes of his superiors are, and, as Mr. Elston suggests, perhaps be reluctant to express a different or an independent view.

Mr. RIVERS. Of course, the record will indicate what happened later on. That is where nothing is final.

Mr. LARKIN. That is on the several questions on which they have the opportunity to overrule the law officer.

Mr. RIVERS. But it is not final.

Mr. LARKIN. They can make it final.

Mr. RIVERS. That is right.

Mr. BROOKS. Is there any further discussion on this article? If not, is there any objection to it?

Then it stands approved as read.

Article 52.

Mr. SMART (reading):

ART. 52. Number of votes required.

(a) (1) No person shall be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court martial present at the time the vote is taken.

(2) No person shall be convicted of any other offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) (1) No person shall be sentenced to suffer death, except by the concurrence of all the members of the court martial present at the time the vote is taken and for an offense in this Code made expressly punishable by death.

(2) No person shall be sentenced to life imprisonment or to confinement in excess of ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court martial shall be determined by a majority vote. A tie vote on a challenge shall disqualify the member challenged. A tie vote on a motion for a finding of not guilty or on a question of the accused's sanity shall be a determination against the accused. A tie vote on any other question shall be a determination in favor of the accused.

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References: A. W. 43; A. G. N. article 50; proposed A. G. N. article 28.

Commentary: This article is derived from A. W. 43. Proposed AGN, article 28 would require only a majority vote to convict of any offense, but is the same as A. W. 43 as to the number of votes required for sentences.

Paragraph (3) of subdivision (b) clarifies A. W. 43 as to the number of votes required for a sentence which does not extend to death or imprisonment in excess of 10 years.

Subdivision (c) clarifies the method for determination of issues to be decided by a majority vote when the vote is tied. It is felt that a tie vote on a challenge should disqualify the person challenged regardless of whether the challenge is by the prosecution or by the defense. It is also felt that a motion for a finding of not guilty and the question of the accused's sanity should not be decided by a tie vote as these are considered again in the vote on the findings. All other tie votes are determined in favor of the accused.

Mr. BROOKS. Referring to that last item there about the question of insanity being determined by a tie vote, that was a matter covered in the general hearings, and I think two witnesses brought that out.

Mr. SMART. Objection was raised, Mr. Chairman, as to why we should not resolve the tie vote in these two cases in favor of the accused, the same as we have in all other instances here.

Mr. BROOKS. What is your answer?

Mr. SMART. Well, so far as I am concerned, I realize what the argument is for leaving it as it is, resolving the tie vote on the question of the sanity of the accused against the accused.

It is argued that even though they hold that the accused is mentally responsible for his acts that they subsequently have another opportunity to pass upon sanity when they vote upon the findings as to guilt or innocence.

With that argument I cannot agree.

I think that the question of the accused's sanity is a single issue which must rise or fall upon its own merits and at the time it is raised I think that all of the possible testimony which is pertinent and relevant to that particular issue should be placed before the court, and then and there they should make their ruling.

I cannot conceive of anything additional developing in the trial which would touch on the issue that should not have been produced to the court at the time the issue itself was raised, so I cannot agree that a tie vote on the sanity of the accused should be resolved against the accused for such a reason.

Mr. DEGRAFFENRIED. Let me ask you this: Ordinarily a man is presumed to be sane until proven insane, and in many jurisdictions the burden of proof is upon him in a criminal case to establish his insanity beyond a reasonable doubt by the evidence, to reasonably satisfy the jury that he is insane.

In other words, he is presumed to be sane, and on that particular issue in many jurisdictions the burden is on him to establish by the preponderance of the evidence to the reasonable satisfaction of the jury that he is insane.

Mr. SMART. I agree with you.

Mr. DEGRAFFENRIED. My thought is that it is from that presumption, from the burden that he has there of showing that he is insane, that that is the reason why that provision was put in there.

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Of course, in many jurisdictions the burden is on him to proceed, and if he raises a reasonable doubt as to his sanity, then the jury finds him insane, but in other jurisdictions they make him prove his insanity to the reasonable satisfaction of the jury. .

Mr. BROOKS. Do you want to say something more, Colonel?

Colonel DINSMORE. I think Mr. deGraffenried has stated the reason for this very clearly.

The burden is on him who asserts a proposition and if there is a tie vote he has not sustained it, and that is true in the Supreme Court of the United States.

These people go up there and ask for a review and if there is a tie vote it is refused.

Of course, the point has been raised throughout these hearings that this code has to go much further than any civil law has to go, any Federal or State law, so far as clothing the accused with many safeguards is concerned.

Maybe we are leaning over backward and going too far, but it was my theory in this particular instance that if you are going to clothe the defendant with these extra safeguards that you do not have in any civil court it might be well to go this far here.

Mr. LARKIN. The questions of a motion for a finding of not guilty or a motion on the question of insanity are extremely important questions. They are usually questions that contain mixed questions of fact and of law.

A person, as a matter of fact, may be established to be of sound or unsound mind, or that determination may be one of law. For that reason the law officer has not in present practice nor in this code been given the final say in ruling on either of those questions.

He does rule, but it is subject to veto by the court because of the combination of facts and law. In the event the court votes on the question it does so only if they do not agree with the law officer who makes the first ruling.

In the event that they are split the question arises, in whose favor should it be resolved? As Mr. deGraffenried pointed out, normally a split works against the proponent of a propostion, but I do not think this can be said even in that instance to be a disadvantage to the accused because either of these motions will be made during the course of the trial, the insanity one at the beginning of a trial or during the course of a trial, and the motion for a finding of not guilty at the end of the Government's case or at the end of the whole case. If the court is split it may be further enlightened by a continuation of the trial because there is more evidence to be put in, and that is true even in a case where insanity is the problem because if the accused were to testify the court itself may be enlightened on the question of the sanity or the insanity of the accused by the way he comports himself on the witness stand.

Actually the court is not bound by anybody in determining sanity or insanity. Expert medical opinion may be given to it. They may have the results of a medical survey, and so forth, but in the last analysis it is the court's determination. In the event that the split persists in the court on the question, the accused is protected, since they cannot convict him of any offense at all unless there is a two-thirds concurrence.

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If after hearing the rest of the evidence in the case they are still split, why, no conviction is possible, so the accused is protected anyhow.

Mr. ELSTON. Do you not set up a different rule where insanity is set up as the defense than you do for an alibi or self-defense or something else? because in section 3 you say:

all other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

Now, if the accused sets up the defense of insanity, we will say, and half the members of the court feel that he is insane, they have to resolve that against him, do they not?

Mr. LARKIN. Well, that is for the purpose of that motion, is it not?

Mr. ELSTON. Well, it does not say motion. There is a tie vote on the motion for a finding of not guilty, but on a question of the accused's sanity, when you raise the question of a person's sanity then does not the court determine whether or not he was insane at the time the act was committed, and if so he is not guilty on the ground of insanity just the same as if it were self-defense, an alibi, or something else?

Mr. LARKIN. That is right.

Mr. ELSTON. You are giving the accused person less protection where he sets up the defense of insanity than for some other type of defense.

I can understand the motion for a finding of not guilty, because that is a motion made before the court deliberates, which is generally made at the close of the prosecution's evidence, or at the close of all of the evidence, but it is before the court begins to deliberate on the facts.

However, the question of insanity goes right into the jury room with them and has to be considered along with all of the other evidence, and they have to be satisfied that the defendant is guilty beyond a reasonable doubt.

Of course, as Mr. deGraffenried said, if the defendant sets up insanity as a defense, he only has to establish it by a preponderance of the evidence.

Mr. DEGRAFFENRIED. In some jurisdictions he has to prove to the reasonable satisfaction of the court by a preponderance of the evidence. In other words, he has just to raise a reasonable doubt.

Mr. ELSTON. In our State it is by a preponderance of the evidence, but the court has to consider insanity along with every other fact in the case, and it may be that his sole defense is insanity. That is his sole defense, and if half of the court say he is not insane, then they have to find him guilty, do they not?

Mr. LARKIN. Well, it requires at least a two-thirds vote to find him guilty.

Mr. ELSTON. In every other case by a two-thirds vote, but in insanity 50 percent.

Mr. LARKIN. How can they find him guilty of anything if half of them think he is insane?

Mr. ELSTON. You say it will be resolved against him.

Mr. LARKIN. For motion purposes.

Mr. ELSTON. Do you make any motion with respect to his insanity?

Mr. LARKIN. I think so. Usually it is an interlocutory question.

Mr. BROOKS. I want to raise this question. It seems to me that you are going to have to decide whether or not you mean insanity of the accused at the time of the trial, or the insanity of the accused

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at the time of the commission of the act, because if it is a question of the sanity of the accused at the time of the trial it will have to be raised on a preliminary motion.

Mr. LARKIN. I think it is both, Mr. Chairman.

Mr. BROOKS. If it is insanity at the time of the commission of the act it can be raised either way.

Mr. LARKIN. That is right.

Mr. BROOKS. But you cannot find him guilty if he was insane at the time of the act, and sane at the time of the trial.

Mr. LARKIN. That is right.

Mr. BROOKS. Suppose you do not present the question of the insanity of the accused at the time of the commission of the act as a preliminary or interlocutory matter, but reserve that for the final verdict, in that instance the court will either find him on the question of guilt, guilty or not guilty; on the question of sanity, sane or insane.

Mr. LARKIN. Well, if he does not bring it up in some way the presumption rests against his insanity in the first place.

In other words, there is a presumption of sanity, and if he does not bring it up in any way, unless there is some indisputable evidence there that would indicate that he was insane, or is now, probably the court would not have it before it at all.

Mr. BROOKS. Suppose he does not bring it up until the final argument of the case.

Mr. DEGRAFFENRIED. If it is a tie vote it works against the accused.

Mr. LARKIN. That is, as far as the motion is concerned.

Mr. ELSTON. Let us get it clear about what motion is made with regard to insanity.

Mr. LARKIN. A motion is made to dismiss which is based on the insanity of the defendant either at the time of the alleged commission of the act or at the time of trial.

Mr. ELSTON. Then you better say, "a tie vote on a motion for a finding of not guilty, or on a motion with respect to the accused's sanity."

The way it reads now, all questions about sanity shall be determined against the accused if there is a tie vote.

Mr. LARKIN. We could repeat the word "motion" again in that same sentence after "or," "on a motion relating to the question of the accused's sanity."

Mr. ELSTON. Even then it should be made clear that it is before the submission of the case.

Mr. LARKIN. During the course of the trial.

Mr. ELSTON. Before final submission of the case.

Mr. LARKIN. That is right.

Mr. BROOKS. The thing that bothers me and that bothers Mr. Elston is if you do not raise the question of sanity until the whole thing goes to the court, are you going to apply the majority rule, or are you going to apply, as in a capital case, the rule that you must have a unanimous verdict. Do you see the point?

Mr. LARKIN. Yes, I do. It is our intention that, as spelled out in (a) and (b) and its subdivisions that there might not be either a verdict or sentence except on the minimum percentages, on a verdict the minimum percentage being two-thirds, and the minimum percentage on a sentence being two-thirds.

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On the other interlocutory questions, however, where the court is forced during the course of the trial or at the beginning of the trial to determine a motion made either for a finding of not guilty or on the question of insanity, as to those motions a tie vote shall be determined against the accused for that purpose.

Then when the deliberate they cannot convict him unless there is a two-third concurrence.

Mr. DEGRAFFENRIED. Mr. Larkin, there is this thought that you have in mind there in your construction of section (c) of this article, that after the Government concludes its case against the accused during the course of a trail the defendant has a right in most civil jurisdictions to make a motion to exclude the evidence or for a directed verdict of not guilty on the grounds that as a matter of law the prosecution has not made out a case against the defendant.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. And that there is not sufficient evidence to make the question of the defendant's guilt vel non a question of fact for the court to determine.

In other words, that the prosecution has failed to make out a prima facie case against the defendant as a matter of law.

Further at this stage of the proceedings, or any other stage, that the accused has a right to file a motion that he be found not guilty by reason of insanity based on the evidence and that if there is a tie vote the ruling on the motion should be adverse to the accused; but that after the ruling the trial shall proceed and after the conclusion of the trial and the deliberations of the court, then either two-thirds or three-fourths of the court, depending on the nature of the charges, would have to believe the defendant guilty from the evidence beyond a reasonable doubt and be reasonably satisfied by a preponderance of the evidence that he is sane before he could be convicted.

Mr. LARKIN. That is a very clear statement and very much better than I have given.

Mr. ELSTON. You have not said that in this connection so that it is clear.

Mr. LARKIN. That may be. That was the intention that the tie vote is against the accused insofar as determining the motion is concerned.

Mr. ELSTON. If it is on the motion that is entirely different.

Mr. BROOKS. Then why not put in something about an interlocutory tie vote.

Mr. LARKIN. Mr. Smart and I can submit language to make that clear.

Mr. RIVERS. In subparagraph (a) (1) it states:

> No person shall be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all members of the court martial present at the time the vote is taken.

That is a general court?

Mr. LARKIN. That is right.

Mr. RIVERS. What constitutes a quorum?

Mr. LARKIN. It must be not less than five members of the court.

Mr. RIVERS. Not less than five members of the court?

Mr. LARKIN. Yes.

Mr. RIVERS. What is the maximum?

Mr. LARKIN. There is no maximum.

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Mr. SMART. They may have started out with, we will say, seven embers, and some catastrophe may have come along and two of em were killed, but you would still have five remaining members, d then you would still have a legal court.

Mr. RIVERS. Well, say two of them are absent without any explanaon.

Mr. SMART. They had better have a good explanation. They are bject to court martial if they are absent without an explanation.

Mr. RIVERS. I ask that because I can conceive of a case where one ght want to vote to acquit the defendant.

Mr. LARKIN. We have already considered article 29, but there we ve said that no person may be absent except for physical illness, r may they be removed by the convening authority except for good use, illness or whatever else it may be, and in another section in the me way we have said that if the court is reduced below this minium number of five members then, of course, it cannot carry on less new members are appointed to bring the number up to five.

Mr. RIVERS. I am talking about a situation where they still maintain at five, but less than the maximum number.

Mr. LARKIN. Less than the number they started with?

Mr. RIVERS. Yes, less than the number they started with.

You see, a man can be sentenced to the death penalty by a minority the court, in substance.

Mr. LARKIN. The provision in article 29 that I referred to is found subdivision (a) which says:

No member of a general or special court martial shall be absent or excused after e accused has been arraigned except for physical disability or as a result of a allenge or by order of the convening authority for good cause.

Mr. RIVERS. But all of those things could be questioned. Would here be an appealable exception to that?

Mr. LARKIN. They might show it was not good cause. The facts ould be in the record.

Mr. RIVERS. Would that be cause for an appeal if that were stablished?

Mr. LARKIN. If it could be demonstrated that it materially prejuiced or substantially prejudiced the rights of the accused I should ay so.

Mr. RIVERS. I would like to have that in the record. The defense ounsel could contend that and be overruled and then you would ave the minimum required by the code and still a man would go to is death under sentence by a minority vote of the court.

Mr. BROOKS. Is there any further discussion?

Mr. GAVIN. Are you satisfied with that or are you going to write n any specific number of members that should be present?

Mr. RIVERS. If the explanation was not satisfactory, if counsel on he other side does not think the excuse sufficient, I would like to have he record indicate that there would be ground for an appeal.

Mr. LARKIN. As you recall, we have a provision that the defense ounsel may set out in a brief any matters which he thinks are suffiient to affect the accused.

Mr. GAVIN. Has it not been the rule in military trials, and courts martial in the Navy that they can be convicted by a three-fourths vote?

Mr. LARKIN. The percentage, Mr. Gavin, differs between the Army and the Navy, and this represents the percentages of the Army

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at the present time which are higher percentages than they have heretofore been in the Navy. The Navy agrees that this is appropriate. They are willing to apply it to their service as well. So, on an over-all three-service basis, this is a higher percentage than they used to have in the Navy, but it is exactly the way it has been in the Army.

Mr. GAVIN. In the Federal courts where a man is charged with a crime you have to have 12 jurors.

Mr. LARKIN. Yes, in many States you do; there is no question about that, Mr. Gavin.

Mr. GAVIN. May I ask Colonel Dinsmore if he knows of any important general court-martial case where the court consisted of less than five members?

Colonel DINSMORE. It could not consist of less than five, Mr. Gavin, but I will say it is very unusual for a court to be reduced below the original number that the court started with.

Mr. GAVIN. What I had in mind is in a Federal court it requires a unanimous verdict to find a man guilty.

Colonel DINSMORE. Of course, we have that in reference to the death sentence.

Mr. BROOKS. A great many State courts now use a percentage for minor crimes.

Mr. DEGRAFFENRIED. That is right.

Under this provision here, however, a man can be sent up for life if three-fourths of the members, believe he is guilty. That is a pretty long sentence.

Colonel DINSMORE. That is correct.

Mr. RIVERS. Why do they not put life in there under the same article with the capital offenses; what would be wrong with that?

Mr. LARKIN. I suppose you may find circumstances where the court is reluctant to impose the death penalty or where one member of the court is, but he believes that life imprisonment is sufficient punishment. He would vote for life imprisonment but he would not vote for the death penalty, and if there was no leeway provided in between he would be faced with either the death penalty for the defendant or something much less, and he might feel that it is so serious that he would be tempted to vote for death.

Mr. BROOKS. I think it is fair to call your attention to this, that in a great many jurisdictions where you bring in a verdict which would normally carry the death penalty, the court has some authority, in his, discretion, to prescribe life imprisonment instead of death.

Mr. LARKIN. That is true. I am not familiar with all the State variations in that respect. I know in New York, for instance, in the case of a felony that it is possible for the court to reduce the sentence to life.

Mr. HARDY. As long as a man gets a life sentence, and as long as he is alive he has still some hope of clemency or of bringing up the possibility of securing a pardon, but when a court gives a man a death sentence he does not have that chance.

Mr. BROOKS. Are there any further discussions or arguments on this article? If not, it stands adopted.

Article 53.

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Mr. SMART (reading):

T. 53. Court to announce action.

Every court martial shall announce its findings and sentence to the parties as on as determined.

References: A. W. 29; proposed A. G. N. article 28.

Commentary: This article is derived from proposed A. G. N. ticle 28 and requires the trial counsel, the accused, and the defense unsel to be informed of the findings and sentence as soon as the ntence is determined. The findings may be announced as soon as ey are determined if it is believed appropriate to do so. A. W. 29 quires an acquittal to be announced, but leaves the announcement the sentence and findings of guilty to the discretion of the court is felt appropriate, however, that the accused and his counsel be formed as to the outcome of the trial as soon as the results are termined.

Mr. BROOKS. Is there any comment or any discussion on that ticle?

Mr. GAVIN. Is that usually done?

Mr. LARKIN. Yes; it usually is, but it is not required as this requires . There is a requirement that an acquittal be announced but not iat the conviction be announced.

Mr. GAVIN. Let us hear from Colonel Dinsmore on that.

Colonel DINSMORE. It is almost universally done, Mr. Gavin, and ie only exceptions are cases in which, for reasons of public policy ie court feels that it is not advisable to announce the sentence.

As a striking example of that kind, take a case in some community here some soldier is being tried for an offense committed in which he civil community has a great interest, and the feeling runs high, it iay be that it is advisable for good public relations and public policy ot to announce the sentence in such a case because the man might e acquitted, you understand, or he might not.

Mr. RIVERS. Off the record.

(Discussion off the record.)

Captain WOODS. For the sake of the record, I would like to remark hat this is not true of the Navy. The Navy does not announce the indings of the court until the first reviewing authority has completed ts action. We have no objection to this provision.

Mr. BROOKS. Does the Navy tell the accused what the findings are mmediately?

Captain WOODS. No, sir; we wait until the first reviweing authority as acted on the case and then tell the accused what the finding is.

We have no objection to the change suggested.

Colonel DINSMORE. I would like to correct my former statement for the record. I am reminded that we are required to announce the acquittal forthwith, so my illustration would only be good in the event somebody thought the sentence was not severe enough.

Mr. BROOKS. Do I understand you, Colonel, to interpret this as meaning that the finding shall not be given immediately to the defendant?

Colonel DINSMORE. No, sir; this requires that it shall be. I understood Mr. Gavin to be asking about the present practice which now prevails.

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Mr. BROOKS. Is there any objection to the article as read? If not it will be adopted.

Article 54.

Mr. SMART (reading):

ART. 54. Record of trial.

(a) Each general court martial shall keep a separate record of the proceedings of the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the law officer. In case the record cannot be authenticated by either the president or the law officer, by reason of the death, disability, or absence of such officer, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable for such reasons, the record shall be authenticated by two members.

(b) Each special and summary court martial shall keep a separate record of the proceedings in each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may prescribe.

(c) A copy of the record of the proceedings of each general and special court martial shall be given to the accused as soon as authenticated.

References: A. W. 33, 34, 111; A. G. N. articles 34, 64; proposed A. G. N., articles 16 (e), 21, 29.

Commentary: Subdivision (a) contains provision similar to those of proposed A. G. N. article 29, but differs from A. W. 33 in that the law officer and the president authenticate the record of a general court martial. A. W. 33 requires the trial counsel and president to authenticate the record. It is intended that records of general courts martial shall contain a verbatim transcript of the proceedings.

Subdivision (b) is derived from A. W. 34. This article is subject to this provision of article 19 which requires a complete record to be kept in cases where a bad-conduct discharge is adjudged.

Subdivision (c) is new. Under A. W. 111 a copy of a general court-martial record is given to the accused if he demands it. Under Navy practice, the accused is automatically given a copy of the record of a general court martial. This article goes further in that a copy of the record of a general or special court martial is required to be given to the accused. It is felt to be appropriate that the accused should have a copy of such records for his personal use. If such records contain classified matter, means of safekeeping should be provided.

Mr. RIVERS. We discussed that the other day, ad infinitum, ad extremum, and several other ways. This just gives the summary of it.

Mr. SMART. In checking back over these cases we find that there are about 37,000 special court-martial cases a year in the Army, about 24,000 a year in the Navy, and 8,500 a year in the Air Force. I cannot vouch for the exactness of those figures, but I think that they are substantially correct.

We find that in the present table of maximum punishments, which prescribes the punishment for each of those offenses, about 90 percent of the offenses tried by summary courts in the Navy have the power to adjudge bad-conduct discharges, but as a matter of fact only about 15 percent of that group got a bad-conduct discharge.

That means that we are furnishing reporters in 85 percent of the cases where bad-conduct discharges are not given, even though they are authorized by the table of maximum punishments.

That would mean, under the current situation, that the Army would be furnishing a reporter in about 24,000 cases where a bad-conduct discharge was not adjudged as part of the sentence.

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Mr. RIVERS. With the enlistment of reserves and the establishment of women's corps in the respective services, could you not institute a program to teach them to take down testimony? Of course, every stenographer is not a reporter, but still all reporters are stenographers.

That would probably be an insuperable task.

Colonel DINSMORE. Of course, that could be done to a certain extent; but, Mr. Rivers, as Mr. Smart's figures indicate—and I do not want to reopen something and take up your time on the thing unnecessarily—it is a monumental undertaking. There is a big personnel problem involved there with 24,000 cases a year to be reported; and, whether you do it by civilian court reporters and pay them or whether you do it by having somebody in the service, they have to be pretty high ranking, as they are well paid.

Mr. BROOKS. And they have to be awfully good, too.

Colonel DINSMORE. Yes; and it is going to be a serious problem.

Then there was this other pertinent thought that occurred to me since the matter was discussed the other day. You know every year in compiling the budget the President very properly says how much money can be used for national-defense purposes and how much can be used for other purposes, and then that will be allotted among the Army, the Navy, and the Air Force, and that will be the over-all ceiling that you cannot exceed.

Now, of course, I do not know, but I doubt if the budget is going to take into account the fact that this additional burden has been imposed on us. We are going to have to do it in some way.

Mr. BROOKS. What is it going to cost you, Colonel?

Colonel DINSMORE. I do not know what court reporting costs, Mr. Chairman.

(Discussion off the record.)

Mr. RIVERS. Why would it be impossible to start training them to be reporters? Say we set up an independent JAG group for the service, why would it be impossible to train these people to be capable of taking down testimony?

Colonel DINSMORE. It would not be impossible, Mr. Rivers. I am just pointing out the fact that we would have to have a great many of them and it is going to cost a great deal of money whichever way you do it.

Mr. RIVERS. It would be awfully good publicity if the armed services could do that, because the Members of Congress are very frequently told by their constituents or by one of their colleagues about some case involving a court martial where there was a miscarriage of justice. What we want to do is avoid situations of that kind. The best publicity that we can get is to show how great the cooperation is and the justice which attends all of these trials, and in that connection I am not unmindful of what the budget may do. If we could start now while time is not of the essence and we do not have that pressure on us all of the time, it might be a good thing to do so.

Colonel DINSMORE. We have already decided on having the reporting done.

Mr. BROOKS. If you are going to take these proceedings down, you should do a good job of it. I have seen some records of proceedings where I thought it would have been far better not to have attempted

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to take them down than to do it in the manner in which they were taken down. So that involves this thought: First, you have got to have a person who is really an expert, and you cannot do it for small amounts; and, secondly, if you put it over into the women's branches you are going to have to disperse Waacs, Waves, and Spars all over the earth where there are trials to be conducted, but you are not going to be able to have them available when you need them; is not that true?

Colonel DINSMORE. Yes, sir.

Mr. HARDY. This thing will possibly cost a good many millions of dollars, will it not?

Colonel DINSMORE. Yes, sir.

Mr. BROOKS. I would like to have the committee go back and reappraise our requirement in reference to bad-conduct discharge cases in that connection.

Mr. RIVERS. We can amend the Selective Service Act and draft reporters.

Colonel DINSMORE. May I make one further observation on that subject?

Mr. BROOKS. Go right ahead, Colonel.

Colonel DINSMORE. The language of the present law, the Elston bill, and the language of this code as drafted is that in these bad-conduct cases the proceedings shall be transcribed.

Now, the other day the amendment that the committee adopted read, "unless a reporter is present at the trial." There is a difference. The proceedings can be transcribed without a reporter being present. They can be transcribed in handwriting by an officer, as was done for many, many years.

Mr. BROOKS. That is just what I am complaining about, however. When that officer transcribes the proceedings, it is not a true reflection, very often, of the trial.

Mr. GAVIN. You mean for accuracy and correctness?

Mr. BROOKS. Yes; and for use of words. The officer very often to rush the thing along may change the verbiage to shorten it so that it does not reflect the proceedings.

Mr. RIVERS. What about the use of this recording equipment; would it be beyond the realm of possibility to use that?

Mr. SMART. What variety do you refer to, Mr. Rivers?

Mr. RIVERS. Well, the very best kind.

Mr. GAVIN. Do you find the difficulty in finding personnel to record these cases, or do you find the difficulty in finding personnel to review the cases after they have been determined?

Colonel DINSMORE. It is a serious problem.

Mr. GAVIN. How long do you take before you get to the review of a bad-conduct discharge case?

Colonel DINSMORE. How long do we take?

Mr. GAVIN. Yes.

Colonel DINSMORE. It does not take very long. The case is tried; it is acted on on appeal; and it comes up here. I do not know whether Major Solf has any further information to give you on that, but the review work is practically current at the present time.

Mr. BROOKS. Off the record.

(Discussion off the record.)

Mr. BROOKS. If there is no further discussion on this article, we will adopt it as read and proceed to article 55.

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Mr. SMART (reading):

ART. 55. Cruel and unusual punishments prohibited.

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, shall not be adjudged by any court martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

References: A. W. 41; proposed A. G. N., article 31.

Commentary: This article incorporates present Army and Navy provisions.

Mr. BROOKS. Is there any comment or discussion of this article? This is based on the forty-first article of war, is it not?

Mr. LARKIN. That is right.

Mr. SMART. That just takes us out of the dark ages.

Mr. BROOKS. If there is no objection, and I assume there is not, we will approve article 55 and proceed to article 56.

Mr. SMART [reading:]

ART. 56. Maximum limits.

The punishment which a court martial may direct for an offense shall not exceed such limits as the President may prescribe for that offense.

References: A. W. 45; proposed A. G. N., article 33 (b).

Commentary: This article authorizes the President to establish maximum limits of punishment for an offense, except one for which a mandatory punishment has been prescribed.

That refers, Mr. Chairman, to the table of maximum punishments which is already included in the Manual of Courts Martial, and the Navy has a comparable procedure in their court-martial proceedings.

Mr. BROOKS. What about putting at the end, "exceeds the limits prescribed by this code?"

Mr. RIVERS. Certainly the President is not going to prescribe anything different than the statutory law provides. He could not if he desired to.

Mr. SMART. That is right.

Mr. RIVERS. Is that your understanding of it, too?

Mr. LARKIN. Yes, sir.

Mr. BROOKS. Someone has questioned this article.

Mr. RIVERS. They will ask us that question on the floor about this, and we want to be prepared to answer that the President cannot fail to comply with statutory authority.

Mr. LARKIN. If he fails to comply with statutory authority, it would be an illegal sentence; it would have to be in accordance with the code.

Mr. HARDY. He can do that in those cases where we have provided discretionary power.

Mr. LARKIN. Unless it is mandatory, he could.

Under article 18, which we have covered before, we have said that a general court martial may adjudge any punishment not forbidden by this code. Those which are forbidden are branding, marking or tattooing on the body, and so forth, as contained in article 55, which has just been read.

The only other provisions as to punishment are that certain punitive articles carry the provision for a mandatory death penalty. Otherwise, the court may impose such punishment as it may direct, but in so directing it is bound by the maximum limits that are set by the President.

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Mr. RIVERS. And the President's policy historically has been to cut them down rather than to try to raise them.

Mr. LARKIN. He himself sets the maximum.

Mr. RIVERS. That is, above those which the code provides.

Mr. LARKIN. Yes, beyond what the code has provided.

Mr. RIVERS. That is what I want the record to indicate.

Mr. BROOKS. This article 56 gives him that authority?

Mr. LARKIN. No, article 18 prevents that.

A court martial may adjudge any punishment not forbidden by the code. Now, take a death case. In one or two instances it is mandatory. In several others it may be imposed or not. In all other cases it may not be imposed, even if the President says he would like to have it imposed.

Mr. RIVERS. That is right.

Mr. LARKIN. Because it has not been specified, he could not provide for it.

Mr. RIVERS. Like we observed the other day before the Elston Act went into effect, for certain offenses they automatically give the death sentence in the occupied countries, and it might be good publicity to point out that as soon as a man leaves the country the President generally takes a few years off his sentence.

Mr. BROOKS. That was the point I raised when article 18 came up. In the last sentence it says:

General courts martial shall also have jurisdiction to try any person who by the law of war is subject to trial by military tribunal and may adjudge any punishment permitted by the law of war—

and yet you get over here, and you say the power to punish—

shall not exceed such limits as the President may prescribe for that offense.

Mr. LARKIN. Well, in that case, again——

Mr. BROOKS. There is nothing that says there is a limit set by this code.

Mr. LARKIN. There are no limits set by this code, except that the death penalty can be imposed only in such articles as the code provides. Otherwise there is no limit except for cruel and unusual punishments.

Mr. GAVIN. Would you repeat that again, Mr. Larkin?

Mr. LARKIN. Yes, sir. Perhaps I can start from another tack. As we come to the punitive articles, starting with 77, you will see each one specifically says that the person found guilty can be sentenced as the court martial may direct. In a certain few a death penalty is provided on a mandatory basis, and in a certain additional number there is the death penalty or such other sentence. Except where it is spelled out that the death penalty can be imposed, it cannot be imposed. In no other case, the President to the contrary notwithstanding, can an offense draw a death penalty. Unless Congress provides it specifically in the article, no one else can provide it.

Mr. RIVERS. That is right.

Mr. LARKIN. As to that, the President and everybody else is bound. He cannot raise any sentence to the death penalty, unless it is already provided in here.

Mr. RIVERS. All right.

Mr. LARKIN. Now, in setting maximum limits he can set whatever maximum limits, aside from the death penalty—20 years, 10 years, 30 years, or whatever it may be—and the court martial may not exceed

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any of those maximums. However, there is no particular limit of the maximum except the death penalty.

When I say no limit to the maximum, I am talking about confinement, as distinguished from the death penalty.

The President cannot, in addition, prescribe any punishment which would be cruel or unusual or any punishment that would call for tattooing, marking, and others prohibited.

Mr. GAVIN. He can use that?

Mr. LARKIN. He cannot.

Mr. RIVERS. Neither can the court.

Mr. LARKIN. Neither can the court. Exactly.

I think a reading of 18, 55, 6, and the specific punitive articles makes it clear how it is bound, reading one with the other. It is the same as the present situation.

Mr. RIVERS. That is historically the way it was operated?

Mr. LARKIN. That is right.

Mr. RIVERS. He has to put "30 days" or so much fine or whatever it is?

Mr. LARKIN. He is free to set the maximum, except that he cannot do anything inconsistent with what Congress has passed in this code. Once he sets them, then the courts martial cannot do anything in violation of the code and what he has set.

Mr. BROOKS. Are they any further questions or discussion?

Mr. RIVERS. I think that is plain.

Mr. BROOKS. We will take up article 57.

Mr. SMART (reading):

Article 57. Effective date of sentences.

(a) Whenever a sentence of a court martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date such sentence is approved by the convening authority. No forfeiture shall extend to any pay or allowances accrued before such date.

(b) Any period of confinement not suspended included in a sentence of a court martial shall begin to run from the date the sentence is adjudged by the court martial.

(c) All other sentences of courts martial shall become effective on the date ordered executed.

References: A. W. 16, 47 (d); proposed A. G. N., article 39.

Commentary: This article is new. Subdivision (a) prohibits the forfeiture of pay or allowances becoming due before the date of approval by the convening authority. Formerly an Army court-martial sentence could forfeit such earnings. In addition, subdivision (a) permits the forfeiture of pay and allowances becoming due after the date of approval by the convening authority but before the date of final approval by the Secretary, where such final approval is necessary. It is felt appropriate that where an accused is sentenced to both forfeiture and confinement, the forfeiture should reach all pay becoming due while the accused is in confinement awaiting final approval of the sentence. Under article 71 such pay cannot be taken until the sentence is ordered executed after any such required final approval.

Subdivision (b) requires a sentence of confinement to begin to run on the date that it is adjudged even though the accused is not actually in confinement, unless the sentence is suspended.

A. W. 16 has been held to prohibit the forfeiture of pay of an accused until the sentence has been finally approved. This has resulted in a

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prisoner under sentence of a court-martial drawing full pay until a dismissal or discharge is finally approved. The proposed Navy A. G. N. would make all sentences of forfeiture or confinement effective as soon as adjudged.

Mr. DEGRAFFENRIED. In other words, even if it goes up on review he starts getting credit on his sentence from the date of the sentence. He does not just stay there until after the board of review has passed on it

Mr. SMART. That is exactly right, Mr. deGraffenried.

The other particular change in here is that heretofore you could make a forfeiture of pay and allowances due or to become due. This applies only to pay and allowances due. That is, those that have already become due must be paid.

Mr. RIVERS. None of them can be taken away before the day of the sentence?

Mr. SMART. That is correct, sir.

Mr. BROOKS. "Allowances" can be the family allowance?

Mr. SMART. Pay and allowances would cover it.

Mr. RIVERS. That is the reason for the allowance, to protect the family of the defendant.

Mr. SMART. That is exactly what it does. It is a broader provision, so far as they are concerned, relating to pay already due before the date of the sentence.

Mr. BROOKS. It does not protect them in the future on the family allowance?

Mr. SMART. That raises the point, of course, that you have in civil courts. When a man is convicted no one undertakes to take care of his family. You have the same thing in the military. I do not know whether we should have a different rule for dependents of people in the military who are convicted than we have for civilian courts or not. It is an unfortunate thing, but it is always true that the innocent dependents suffer more than the guilty person.

Mr. RIVERS. Could we not write some kind of provision making it possible for the accused to show the financial circumstances of the dependents of the accused?

Mr. SMART. I hesitate to think that it would be proper, as humane as it might be, Mr. Rivers.

Mr. BROOKS. There is a big difference, though, between a man in service who has been taken in, especially by selective service, and a man in civilian life. A man goes into service sometimes against his will. He goes in not knowing the rules of the game, and in a brand new life. He leaves his family, and it makes them dependent upon a certain amount which is stipulated, and then he gets into trouble and you take all of that means of support away from them when he is at a very far distant point, in many instances, and the local people do not know anything about the circumstances. Maybe the family does not know anything about the circumstances, and they do not understand it.

Mr. SMART. The point you raise is very true, Mr. Brooks, but you refer to the soldier who, because of inadvertence and because of a strange way of life is in this situation, and you are assuming he is a draftee who gets into trouble and is court-martialed and has his pay taken away, not only from him but his family. How are you going to distinguish between that type of a fellow and the willful criminal in

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the service who would have committed a crime any place he might be?

Mr. BROOKS. Only this way: If you gave some discretionary authority to the court. Well, you do give them discretionary authority to take these allowances away in certain cases.

Mr. SMART. That is correct. That could be exercised first by the convening authority in his exercise of clemency.

Mr. RIVERS. I do not know how it would take away from the dignity of the statute to write in there some kind of amendment and say, "forfeiture of pay and allowances——"

Mr. GAVIN. "Shall not occur in hardship cases."

Mr. RIVERS. "Shall be at the discretion of the authority, considering mitigating circumstances."

Mr. SMART. That is true as of this moment.

Mr. RIVERS. Why could we not write it in there?

Mr. LARKIN. Actually the general court is the only kind of court that can impose as a part of the sentence a forfeiture of allowance as well as pay. That is one point. I think it is sparingly imposed.

There are, of course, a number of authorities starting with the convening authority who can exercise clemency and limit that portion of the sentence.

In this connection I recall that the Navy generally, in these cases, exercises discretion in the cases where allowances have been forfeited, and does remit the allowances so that the family get them, even if they have been imposed in a general court-martial case. That is all done administratively and is permissible and is being done.

I do not know how the Army operates in that regard.

Mr. RIVERS. Do they take that into consideration, Colonel?

Colonel DINSMORE. I think not, sir.

Mr. RIVERS. Do they consider it when they take the man's money?

Mr. BROOKS. Does the Navy not send them to naval charity?

Captain WOODS. No, sir. We limit his contribution so that he can draw allowances.

Mr. BROOKS. The Army does not?

Colonel DINSMORE. No, sir.

Mr. RIVERS. As Mr. Smart says, with regard to a person who habitually violates these laws, whether an enlisted man or an officer, whether or not a draftee, places his family in the same plane.

Mr. GAVIN. Maybe Colonel Dinsmore can give us the reasons why.

Colonel DINSMORE. Thank you, Mr. Gavin.

Mr. Chairman, this is a problem which is very appealing. There is no week passes, scarcely a day, that letters do not come over my desk where a man is in one of our barracks and he has forfeited his pay and so on, and his family is in dire distress. It touches your heart. It is a problem, however, that society has not solved, as Mr. Smart pointed out, with the same situation existing in the civil courts, where a man is convicted and sentenced.

There is one other aspect I would like to mention for your consideration. It is a matter of policy, of course. This would be in the nature of a gratuity to the family; and if this committee in Congress feels that that is advisable, then we would have nothing to say about that, but there is another aspect that I think should be considered. You are, in effect, creating a type of special consideration for the man whose family is on the border line of distress. You are giving him the privi-

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lege of committing offenses when his buddy, whose family is not in that situation, cannot do it with impunity.

Mr. RIVERS. That is not necessarily true. If he does it two or three times you will kick him out.

Colonel DINSMORE. Yes.

Mr. RIVERS. His family should not be held accountable for the man's indiscretion or ignorance.

Colonel DINSMORE. I do not like to see the family suffer.

Mr. GAVIN. At the same time, it is not so comparable to civilian life because he is inducted into the service. He is taken from civilian life, and he now finds himself in these circumstances.

Colonel DINSMORE. Mr. Gavin, that is true in wartime. At the present time most of them are volunteers.

Mr. GAVIN. It is different, then.

Colonel DINSMORE. I am afraid that with that sort of a provision there would not be that certain deterrent that exists. A man, no matter how bad he is, has his family in mind, and that holds him back to some extent. I am afraid that if you remove that deterrent a good many border-line fellows will say, "It will not make an difference to my family; they will be taken care of."

Mr. RIVERS. That is true, but when you compare them with the civilian, or compare them with the Navy men, it is a little different. We can compare them with the civilian, first. A civilian has greater opportunity, normally, to save money than the enlisted man because he has a greater opportunity to make money. An enlisted man cannot put up a nest egg so well as the average civilian can.

Colonel DINSMORE. I am not so sure. At the present rate of pay, if you take the average man who is an enlisted man, I rather think they are in a better position to save money in the Army than outside.

Mr. RIVERS. Take an enlisted man on a position out in some isolated area, where he knows no civilians, and deprive that family of subsistence. Where on earth will they go to get it?

Colonel DINSMORE. Charity.

Mr. RIVERS. There would not be any charity on the post.

Colonel DINSMORE. Of course, we have charity organizations, too. It is a matter of policy.

Mr. HARDY. What you are saying, Colonel, is that the type of man who is the enlisted man on that post, if he were in civilian life, would not particularly be a problem?

Colonel DINSMORE. That is right.

Mr. HARDY. Did I understand the implication awhile ago that if the Congress comes to the humanitarian pressure for protecting the dependents of the enlisted personnel, that we might also find ourselves subjected to the same sort of pressure to protect families of people convicted in civilian courts?

Colonel DINSMORE. No, sir; I did not intend that. I just said that it would be a discrimination between the man whose family is in want and the man whose family is not in want.

Mr. RIVERS. It might be a deterrent.

Mr. BROOKS. I have this suggestion: For the next article, I am informed by Mr. Smart that we have some witnesses here who have been here most of the day waiting to testify. This particular article here is one where the Navy and the Army are handling it differently. I do not know about the Coast Guard and the Air Force. We have not heard from them.

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My thought is this. Can we not pass this over until later, since it is a quarter of four now, and let the services discuss the matter between now and next week? Then, perhaps, we can all get together on a uniform policy.

Captain WOODS. May I speak off the record?

(Discussion off the record.)

Mr. BROOKS. If there is no objection, we will pass by that article, for the present.

Mr. GAVIN. Pardon me, Mr. Chairman. Are you going to pass by article 57 and then come back to it?

Mr. BROOKS. Yes.

Mr. GAVIN. That is understood, because I would like to get a clear definition of section (b) of article 57.

Mr. BROOKS. We will pass by, Mr. Gavin, on account of these witnesses who have been waiting here, if there is no objection, out of courtesy to them. We will take up the next article.

Mr. SMART (reading):

ART. 58. Execution of confinement.

(a) Under such instructions as the Department concerned may prescribe, any sentence of confinement adjudged by a court-martial or other military tribunal, whether or not such sentence includes discharge or dismissal, and whether or not such discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces, or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use; and persons so confined in a penal or correctional institution not under the control of one of the armed forces shall be subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District, or place in which the institution is situated.

(b) The omission of the words "hard labor" in any sentence of a court-martial adjudging confinement shall not be construed as depriving the authority executing such sentence of the power to require hard labor as a part of the punishment.

References: A. W. 37, 42; A. G. N. article 7.

Commentary: Subdivision (a) is derived from A. G. N. article 7 which permits the Navy to transfer court-martial prisoners to institutions under the control of the Department of Justice. The Navy has found this practice to be beneficial both to the service and to the prisoner. Both the Army and Navy officers in charge of correctional policies recommend the adoption of subdivision (a). It is the policy of the armed forces to segregate youthful and rehabilitable prisoners from the hardened criminals and incorrigibles and to provide for the maximum rehabilitation of prisoners for the purpose of restoration to duty or successful adjustment in civil life. However, due to lack of facilities and personnel with long and continuous experience in the highly technical and specialized phases of penology, the armed forces have serious handicaps in dealing with prisoners with long civilian criminal records, criminal psychopaths, sex deviates, violent incorrigibles and other prisoners requiring special treatment. The Army in operating under A. W. 42 has met with great difficulty in segregating the varied types of prisoners and in giving them specialized treatment. It is felt that the rehabilitation of prisoners who create special problems could be expedited by transferring them to the highly specialized institutions under control of the Department of Justice, which range from training schools and reformatories to major penitentiaries and provide for the treatment of prisoners according to their needs.

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From past experience, the services have found that the type of treatment suited for individuals does not depend on the type of offense or on the length of the sentence. Many of the prisoners who cause special problems in disciplinary barracks are those convicted of military offenses, such as a. w. o. l. or desertion.

Subdivision (b) incorporates the second proviso of A. W. 37 and conforms to present Navy practice.

Mr. BROOKS. Do we have two witnesses?

Mr. SMART. I believe it will probably be a little bit better, before they come on, to let Mr. Larkin set the stage, for those witnesses.

Mr. BROOKS. All right.

Mr. LARKIN. This article 58, Mr. Chairman, modifies the present provisions of the Articles of War but follows more closely the present provisions of the articles for the government of the Navy, in that it sets a flexible standard under which the military may transfer to institutions in the Federal penitentiary system approved by the Department of Justice a larger number of prisoners.

Now the reason why we brought Colonel Garrison of the Army and Captain Maginnis of the Navy in in connection with this section is because both those gentlemen, who are in charge of the correctional services of the Army and Navy, consulted with the committee when it considered this problem; and this is substantially their recommendation of an ideal provision to cover this problem.

Further, we brought them in to put before you the meaning of this article, because of the fact that several witnesses who have appeared before you have criticized this article as granting too broad a power, and from their reading of it they believed, I think, that it would enable the services to transfer too many prisoners. They envisioned under this that the services would send an offender who had been convicted of a minor military offense to Alcatraz. I think that is about the way they epitomize this whole article. Of course, that was not our intention at all. The usefulness of it and the necessity for it, I think, can be well explained to you gentlemen by both Captain Maginnis and Colonel Garrison.

I would say once more that you should bear in mind that it now conforms to the Navy statutory authority which has worked extremely well and is broader than the Army authority which has been so restrictive that the Army has encountered a number of hardships in connection with the transfer of prisoners.

I do not know which of these gentlemen you prefer to hear first. This is Colonel Garrison, Mr. Chairman, and this is Captain Maginnis.

Mr. BROOKS. We are happy to have you gentlemen here.

We will be pleased to have either of you lead off in this discussion.

STATEMENT OF COL. LLOYD R. GARRISON, AGD, CHIEF, CORRECTION BRANCH, AGO

Colonel GARRISON. I reduced my remarks to writing, and if you do not mind I will read them.

Mr. BROOKS. All right, sir.

Colonel GARRISON. It is the policy of the Department of the Army to segregate, as far as practicable, youthful and rehabilitable general prisoners from hardened criminals and incorrigibles, and to provide for the maximum rehabilitation of all general prisoners for the purpose

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of restoration to active duty or successful adjustment in civil life. We feel that rehabilitation in prisons, to get people back in civil life, able to make their own living, is extremely important.

The populations of Army disciplinary barracks include prisoners of all types, ranging from youthful, impressionable first offenders to men with long civilian criminal records, criminal psychopaths, sex deviates, and violent incorrigibles. Adequate segregation for purposes of protecting young, impressionable offenders from detrimental influences and unwholesome contacts with the criminal types mentioned, and the operation of suitable rehabilitation programs to fit the varying needs of the individuals concerned cannot be accomplished in an institution in which all types are confined together. It is, therefore, considered desirable to provide for the confinement of different types of general prisoners in separate institutions having adequate facilities, trained personnel, and rehabilitation programs designed to meet the needs of the particular groups.

The Department of the Army does not have the number and diversified types of confinement facilities under its jurisdiction to provide for completely adequate segregation, control, and rehabilitative treatment of general prisoners by type. Further, military personnel assigned to duty at Army disciplinary barracks are subject to frequent rotation, and do not have the opportunity to gain the maturity of experience and training in the highly specialized professional and technical work involved in the administration of major correctional institutions, and in the control and treatment of the types of offenders involved. It would not be economical or in keeping with the primary mission for the Department of the Army to operate the number and types of institutions and provide the trained personnel required to meet these needs.

For the reasons stated above, it is considered highly desirable for the armed services to have authority to transfer to appropriate Federal institutions those prisoners who, by reason of incorrigibility, criminality, or personal characteristics create special problems of control in disciplinary barracks, and who should be segregated from younger and rehabilitable offenders. However, the restrictive nature of legislation governing confinement of general prisoners, reflected in article of war 42, prevents such transfers.

In addition, it is considered desirable that the Department of the Army have access to the specialized facilities of the Federal Prison System for the rehabilitative treatment of individual offenders where transfer to such Federal institutions would result in benefit to the prisoner, such as transfer of medical and mental patients to the Medical Center for Federal prisoners, and transfer of some youthful offenders to the National Training School and Federal reformatories. The Federal Prison System, which was limited to a few major penitentiaries without particular provision for rehabilitation at the time the existing legislation governing the confinement of Army prisoners was enacted, is now composed of a classified system of 29 well-organized institutions. Such institutions, ranging from training schools, training camps, and reformatories to major penitentiaries, provide for the complete segregation and rehabilitation of prisoners in keeping with their individual needs.

Authority to effect transfers and to determine places of confinement should not be subject to restrictive legal provisions related to the type

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of offense and length of sentence. A great many of the most hardened and incorrigible criminals and vicious personalities now in confinement in disciplinary barracks are serving sentences for military offenses, such as a. w. o. l. or desertion. Many prisoners sentenced for military offenses have long vicious civilian criminal records, and others are criminal psychopaths, sex deviates, and dangerous individuals. It frequently develops that a prisoner, following initial confinement, becomes violently intractable. The prompt transfer of such prisoners to Federal institutions where adequate physical facilities and trained personnel are available for their control would contribute to the correction and adjustment of such prisoners and prevent further deterioration resulting from necessary close segregation in disciplinary barracks for long periods of time because of inadequate facilities.

The proposed article is considered adequate to meet the needs of the Department of the Army. It is believed that the authority contained therein for freedom of transfer of prisoners will result in material benefit to the Department of the Army and to the individual prisoners concerned and will further the Army's policy of segregation and rehabilitation.

I have visited a good number of Federal institutions operated, and I greatly admire the facilities that they have for all different types of individuals.

Mr. RIVERS. That reformatory system is quite an up-to-date organization, is it not?

Colonel GARRISON. It certainly is, sir.

Mr. HARDY. Colonel, do you have a correctional institution at New Cumberland, Pa?

Colonel GARRISON. That is a temporary disciplinary barracks there; yes, sir.

Mr. HARDY. Do you have a variety or type of prisoners there?

Colonel GARRISON. We have to have.

Mr. HARDY. I have had a lot of complaints about the way that is run, from a good many different people.

Colonel GARRISON. What were the complaints, sir?

Mr. HARDY. We will not go into that now. That is why I asked you if you had a variety there.

Colonel GARRISON. The worst ones, if they cannot be handled there well, sir, are sent to a place like Fort Leavenworth, or Milwaukee, or even Camp Cook, Calif., which are somewhat more secure. They are permanent-type installations.

Mr. HARDY. You do have a sundry type of prisoners there?

Colonel GARRISON. Indeed we have to; yes, sir.

Mr. RIVERS. Is that one of the reasons for this provision here that you can segregate the various prisoners?

Colonel GARRISON. It is; yes, sir. That is just an ordinary camp, so to speak. We wire around it, and they do a great deal of fine work there, but they cannot take care as adequately of the many types of people who have to be confined at that one place than they could if we had access to the 29 institutions that the Department of Justice owns.

Mr. HARDY. When I get a chance, I am going to show you some of the letters I have about it from the families of prisoners up there who have been up to see them.

Colonel GARRISON. I would be glad to see them, sir.

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Mr. BROOKS. Colonel, this new article would permit you to send a boy, for instance, who might be a narcotic addict, to one of these two Federal places for adequate rehabilitation?

Colonel GARRISON. Yes, sir.

Mr. BROOKS. One of them, I know, is up in Kentucky.

Colonel GARRISON. Ashland; yes, sir.

Mr. BROOKS. Are there any further questions?

Mr. RIVERS. If you were to build up within the armed services a system of institutions comparable to those of the Department of Justice, it would almost be preventative because of the cost; whereas you can have access to the same type of institutions by a minimum of whatever the per diem or the expense or contract you enter into with the Department of Justice would involve for the same services, is that correct?

Colonel GARRISON. Yes, sir. I may say I have found that they understand our problems very well, indeed. A great many of their custodial personnel are reserve officers of the Army, Navy, and Marine Corps, and practically all of the guards who start in their work have to be ex-soldiers now because they get preference that way. So they really are people who understand the men they are getting, even though they have military background.

Mr. RIVERS. How would this thing operate at the time of the trial? When a sentence is imposed would that be delayed until the court could look into that? Who would that be left up to?

Colonel GARRISON. The reviewing authority would designate the place of confinement.

Mr. RIVERS. I see.

Mr. BROOKS. If I may suggest this thought, I would like to hear from the captain, because the hour is drawing late. After that we can ask them both any questions we want.

I would like for the whole subcommittee to hear the Captain.

Captain MAGINNIS. I subscribe wholeheartedly to the colonel's observations. We have had the authority which you are presently writing in article 58, which article 58 will continue.

I have noted in some of the discussions a fear that there might be an indiscriminate use of that authority to the detriment of the individuals who have committed minor offenses.

I have a statistical report here with regard to general court-martial prisoners.

Mr. SMART. Mr. Chairman, I suggest that the report be incorporated in the record at this point.

(The report is as follows:)

GENERAL COURT-MARTIAL PRISONER STATISTICAL REPORT

JULY 1 THROUGH DECEMBER 31, 1948

INTRODUCTION

Information furnished in this report includes trends in the population of general court-martial prisoners for the 6-month period July 1, 1948, through December 31, 1948. It is a continuation of information included in the statistical report on the general court-martial prisoner population as of June 30, 1948. Data has been compiled from daily muster reports and commitment cards received from retraining commands and disciplinary barracks during this period. Data from tabulated records was available on 2,454 of the total in confinement at the end of the period.

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SUMMARY OF FACTS

1. As of December 31, 1948, there were a total of 2,555 general court-martial prisoners in confinement; 2,114 in disciplinary barracks and retraining commands, 186 in other naval activities and 255 in Federal institutions. This is a total of 342 less prisoners in confinement than there were at the beginning of the period.

2. Average population for the period at retraining commands and disciplinary barracks was 2,333 in comparison to 2,717 during the previous 6-month period.

3. There was a decrease of 137 new commitments and 15 fewer men released than for the previous 6 months. Sixteen fewer men were restored to duty and the percentage of men restored compared with those for the previous quarter dropped from 2,686 to 2,598.

4. Increase in the number of transfers petween activities is shown and is reflected in the fact that 90.47 percent of all men were restored to duty from retraining commands in comparison to 71.82 percent the previous period.

5. No significant change in the type of offenses is noted during this period. 15 percent continue to be offenses of a military nature with desertion continuing to lead all military offenses.

6. The average length of sentence as approved by the convening authority has dropped from 2 years 3 months to 2 years but the average as approved by the Secretary of the Navy remains 1 year and 10 months. The average time served by all releases for this 6 months' period is 6 months 12 days as compared to 7 months 11 days as previously reported. Sixty-two percent of all releases were the result of clemency action.

7. At the end of this period there were 255 general court-martial prisoners confined in Federal institutions. All but 10 percent of such offenders are serving sentences, the chief charge of which is of a nonmilitary nature. This group includes 11 serving on charges of murder, 14 for voluntary manslaughter, 124 for aggravated assault and 35 for rape. The 10 percent serving for military offenses, includes custody risks and prisoners with serious personality disorders.

8. Data tabulated on the 2,454 prisoners confined as of December 31, on which commitment data was available, shows that this group committed a total of 6,603 military offenses (including current offenses) or 2.7 offenses per man.

9. Average age of all men in confinement as of December 31 was 23 years 2 months. Average claimed grade completed was 8.97. Approximately 74 percent of the prisoners are single and place of legal residence claimed includes all States and the District of Columbia.

SECTION I. POPULATION TRENDS

Total population.—As of December 31, 1948, there were a total of 2,114 general court-martial prisoners in confinement at retraining commands and disciplinary barracks. There were 186 confined in other naval activities and 255 in Federal institutions, making a grand total of 2,555. Table I shows total population at each command on the last day of each month for this 6 months' period.

TABLE I.—*Monthly population by command*

	Norfolk	Mare Island	Ports-mouth	San Pedro	Total
July	555	312	553	941	2,361
August	599	326	535	894	2,354
September	600	362	556	857	2,375
October	638	347	585	817	2,387
November	690	348	607	763	2,408
December	593	322	551	648	2,114

Intake.—A total of 2,637 prisoners were received at retraining commands and disciplinary barracks. This included 2,181 new commitments, 97 probation violators, and 325 transfers between retraining commands and disciplinary barracks; 34 were committed for "other reasons." These included escapes and prisoners transferred from hospitals. Table II gives total monthly intake by commands and table III total monthly intake by type of commitment.

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TABLE II.—*Total monthly intake by commands*

	Norfolk	Mare Island	Portsmouth	San Pedro	Total
July 1948	162	79	56	97	394
August 1948	177	94	47	85	403
September 1948	165	128	65	83	441
October 1948	217	80	76	96	469
November 1948	209	111	57	48	425
December 1948	188	114	75	128	505
Total	1,118	606	376	537	2,637

TABLE III.—*Type of commitment—total monthly intake*

	New	Probation violators	Transfers	Other	Total
July 1948	300	23	71	0	394
August 1948	338	22	36	7	403
September 1948	374	15	40	12	441
October 1948	388	16	64	1	469
November 1948	365	5	50	5	425
December 1948	416	16	64	9	505
Total	2,181	97	325	34	2,637

Releases.—A total of 2,948 prisoners were released from retraining commands and disciplinary barracks from July 1 to December 31, 1948. Of this group, 1,820, or 73.53 percent, were discharged from the service and 642, or 25.94 percent, were restored to duty; 62 percent of all direct releases were the result of clemency action. Table IV shows total monthly releases by type of release. Table V shows total direct release exclusive of transfers.

TABLE IV.—*Type of release—monthly*

	Discharged	Restored	Transfers	Others	Total
July 1948	265	90	92	7	454
August 1948	256	83	68	7	414
September 1948	227	97	83	13	420
October 1948	253	115	66	23	457
November 1948	209	117	66	12	404
December 1948	572	135	82	10	799
Total	1,782	637	457	72	2,948

TABLE V.—*Releases by type of release (transfers excluded)* [1]

Type	Number	Percent
Dishonorable discharge	621	25.08
Bad-conduct discharge	1,173	47.37
Restored	642	25.93
Administrative discharge	26	1.05
Escape	11	.45
Set aside	2	.08
Officers dismissed	1	.04
Total	[1] 2,476	100.00

[1] Difference of 15 is accounted for by the fact that some men were transferred to receiving stations to await action and later coded as released. Releases from Federal institutions are included in this total.

Summary and conclusions

1. As of December 31, 1948, there were a total of 342 less general court-martial prisoners in confinement than there were at the beginning of the period; 317 less in retraining commands and disciplinary barracks, 46 less in Federal institutions and 21 more in other naval activities.

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2. Average population for the period at retraining commands and disciplinary barracks was 2,333 in comparison to 2,717 for the previous 6 months.

3. Intake figures for the period show a total increase of 161. This is accounted for primarily by an increase in the number of transfers between activities. There was a decrease of 137 in new commitments and probation violators.

4. There was a total of 15 fewer men released than for the previous 6 months. However, 42 more were released by transfer. It is also noted that there was a net decrease of 16 men restored to duty and the percentage of men restored compared with those discharged dropped from 26.86 percent for the preceding 6 months to 25.94 percent for this period.

5. Of the men restored during this period, 90.47 percent were restored from retraining commands. During the previous 6 months only 71.82 percent of the restorations were from retraining commands.

SECTION II. OFFENSES AND LENGTH OF SENTENCES

Types of offenses.—As indicated in table VI below, 1839 of the total 2,199 prisoners confined in retraining commands and disciplinary barracks as of December 31, 1948, were serving sentences for offenses the principal charge of which constituted violations of military regulation. This represents 84 percent of the total confined. Desertion constituted the largest single group, accounting for 748 cases, 34 percent of the total offenses, or 41 percent of all military offenses. Larceny and theft account for 128 of the nonmilitary offenses. Offenses range in degree of seriousness from murder to drunk and disorderly.

TABLE VI.—*Length of sentence as approved by the convening authority and the Secretary of the Navy by offense (exclusive of those confined in Federal institutions)*

	Approved by convening authority		Approved by the Secretary of the Navy	
	Number	Sentence	Number	Sentence
Murder	1	Death		
Voluntary manslaughter	6	6 years 8 months	5	5 years 1 month.
Aggravated assault	5	1 year 2 months	3	1 year 7 months.
Involuntary manslaughter	5	2 years 8 months	3	2 years 6 months.
Rape	3	3 years 8 months		
Morals offenses	40	do	31	2 years 4 months.
Robbery	37	3 years 9 months	25	3 years 1 month.
Burglary	4	2 years 6 months	3	1 year 10 months.
Housebreaking	18	3 years 9 months	12	2 years 6 months.
Larceny and theft	128	2 years 2 months	86	1 year 9 months.
Fraud and embezzlement	31	2 years 6 months	22	2 years 4 months.
Forgery	12	3 years 1 month	7	2 years 11 months.
Misappropriation	5	2 years 1 month	3	1 year 3 months.
Postal offenses	1	1 year 9 months	1	1 year 9 months.
Desertion	748	3 years 2 months	586	2 years 9 months.
Breaking arrest	185	1 year 6 months	126	2 years 2 months.
A. w. o. l.	536	9 months	370	9 months.
A. o. l.	286	1 year	122	1 year 2 months.
Other naval offenses	84	1 year 5 months	49	Do.
Assault and battery	41	2 years 4 months	30	2 years.
Escape	3	7 years 6 months	3	6 years 4 months.
Assault (threat)		1 month		
Destruction of property	1	1 year 3 months		
Drunk and disorderly	3	11 months	3	1 year 3 months.
Other civil offenses	16	2 years 11 months	12	2 years.

Length of approved sentences.—Table VI shows the length of sentences by offense as approved by convening authority compared with approval of the Secretary of the Navy. Secretary of the Navy approval was received on 1,502, or 68 percent of the cases. Average length of sentence as approved by the convening authority, exclusive of one death sentence and six with sentences over 120 months, was 24 months; average length of sentence as approved by Secretary of the Navy is 22 months. Longest sentences, exclusive of murder, were for voluntary manslaughter (convening authority average 6 years 8 months; Secretary of the Navy 5 years 1 month). Table VII shows total sentences as approved by convening authority as compared with Secretary of the Navy and tables VIII and IX show length of sentences by command for both convening authority and Secretary of the Navy.

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BLE VII.—*Length of sentence as approved by convening authority compared with Secretary of the Navy*

Months	Convening authority		Secretary of the Navy	
	Number	Percent	Number	Percent
3	46	2.09	17	1.13
6	368	16.73	221	14.71
9	262	11.91	178	11.85
o 12	223	10.14	155	10.32
o 18	238	10.82	194	12.92
o 24	314	14.28	258	17.18
o 36	321	14.60	213	14.18
o 60	254	11.55	224	14.91
o 120	162	7.37	42	2.80
and over [1]	10	.46	----	----
[illegible]	----	----	----	----
ath	1	.05	----	----
Total	2,199	100.00	1,502	100.00
Average sentence by months	24		22	

Not included in average sentence.

BLE VIII.—*Length of sentence as approved by convening authority, by command*

Months	Portsmouth		San Pedro		Norfolk		Mare Island		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
o 3	----	----	1	0.15	34	5.39	11	3.26	46	2.09
o 6	1	0.18	34	5.00	219	34.71	114	33.83	368	16.73
o 9	11	2.00	39	5.73	135	21.39	77	22.85	262	11.91
to 12	32	5.81	44	6.47	101	16.01	46	13.65	223	10.14
to 18	59	10.71	74	10.88	66	10.46	39	11.57	238	10.82
to 24	114	20.69	92	13.53	62	9.82	46	13.65	314	14.28
to 36	149	27.04	163	23.97	9	1.43	----	----	321	14.60
to 60	114	20.69	133	19.56	4	.63	3	.89	254	11.55
to 120	68	12.34	92	13.53	1	.16	1	.30	162	7.37
and over [1]	3	.54	7	1.03	----	----	----	----	10	.46
ath [1]	----	----	1	.15	----	----	----	----	1	.05
Total	551	100.00	680	100.00	631	100.00	337	100.00	2,199	100.00
Average sentence by months	36		35		10		10		24	

[1] Not included in average sentence.

ABLE IX.—*Length of sentence as approved by Secretary of the Navy, by command*

Months	Portsmouth		San Pedro		Norfolk		Mare Island		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
to 3	----	----	----	----	14	3.84	3	1.48	17	1.13
to 6	2	0.46	20	3.99	136	37.26	63	31.19	221	14.71
to 9	10	2.31	28	5.58	94	25.75	46	22.77	178	11.85
to 12	51	11.78	22	4.38	56	15.34	26	12.87	155	10.32
to 18	71	16.40	59	11.75	32	8.77	32	15.84	194	12.92
to 24	102	23.55	100	19.92	26	7.12	30	14.85	258	17.18
to 36	85	19.63	122	24.30	5	1.37	1	.50	213	14.18
to 60	93	21.48	128	25.50	2	.55	1	.50	224	14.91
to 120	19	4.39	23	4.58	----	----	----	----	42	2.80
Total	433	100.00	502	100.00	365	100.00	202	100.00	1,502	100.00
Average sentence by months	29		31		9		11		22	

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Length of time served.—The average time served by the 2,476 prisoners released from confinement for the period was 6 months and 12 days (table X). In this average are included 32 men released in November and December on Federal parole but excluded from the average are 5 cases in which the period of confinement was remitted. Average length of time served at retraining commands was 4 months 24 days as compared to 11 months at disciplinary barracks (table XI). Of the total released, 1,528 (62 percent) were released as a result of clemency action, 27 (11 percent) as a result of parole, and 5 (0.27 percent) as a result of a combination of parole and clemency action (table XII).

TABLE X.—*Releases by length of confinement served, by offense*

Offense	Number	Time served
Murder	1	3 years, 4 months.
Voluntary manslaughter	1	Do.
Aggravated assault	2	10 months.
Involuntary manslaughter	3	8 months.
Rape	7	1 year.
Morals offenses	26	Do.
Robbery	19	1 year, 2 months.
Burglary	2	1 year, 8 months.
Housebreaking	17	11 months.
Larceny and theft	92	Do.
Fraud and embezzlement	27	Do.
Forgery	11	1 year.
Misappropriation	13	9 months.
Postal offenses (except theft)	2	4 months.
Desertion	613	9 months.
Breaking arrest	193	8 months.
A. w. o. l.	711	4 months.
A. o. l.	556	5 months.
Other naval offenses	108	6 months.
Assault and battery	41	8 months.
Escape	1	Do.
Assault (threat)	6	1 year.
Drunk and disorderly	8	4 months.
Other civil offenses	11	1 year.

NOTE.—2,470 men released; average time served: 6.38 months.

TABLE XI.—*Average and median time served, by command*

	Average	Median
Norfolk	4 months 21 days	4 months 15 days.
Mare Island	5 months 3 days	Do.
Portsmouth	12 months 24 days	12 months 7 days.
San Pedro	9 months 7 days	8 months 16 days.

TABLE XII.—*Releases by offense by clemency action*

Offense	Clemency		No clemency		Clemency and parole		Parole		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Murder	1	.06							1	.04
Voluntary manslaughter	1	.06							1	.04
Aggravated assault			1	.11			1	3.70	2	.08
Involuntary manslaughter	1	.06	2	.22					3	.12
Rape	1	.06	5	.55			1	3.70	7	.28
Morals offenses	15	1.04	9	.98	1	20.00	1	3.70	26	1.05
Robbery	9	.59	5	.55			5	18.52	19	.77
Burglary	1	.06			1	20.00			2	.08
Housebreaking	10	.65	5	.55			2	7.41	17	.69
Larceny and theft	63	4.12	16	1.74	2	40.00	11	40.75	92	3.72
Fraud and embezzlement	15	.98	9	.98			2	7.41	26	1.05
Forgery	8	.52	2	.22			2	7.41	12	.48
Misappropriation	9	.59	4	.44					13	.53
Postal offenses	2	.13							2	.08
Desertion	521	34.10	91	9.93					612	24.73
Breaking arrest	158	9.03	55	6.00			1	3.70	194	7.84

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TABLE XII.—*Releases by offense by clemency action*—Continued

Offense	Clemency		No clemency		Clemency and parole		Parole		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
A. w. o. l	312	20.42	401	43.78					713	28.80
A. o. l	304	19.89	253	27.62					557	22.50
Other naval offenses	69	4.51	38	4.14	1	20.00			108	4.36
Assault and battery	31	2.03	9	.98			1	3.70	41	1.66
Escape	1	.06							1	.04
Assault (threat)	3	.19	3	.33					6	.24
Drunk and disorderly	4	.26	4	.44					8	.32
Other civil offenses	9	.59	4	.44					13	.52
Total	1,528	100.00	916	100.00	[1] 5	100.00	[1] 27	100.00	2,476	100.00

[1] Includes Federal releases for November and December only.

Federal institutions.—At the close of the period, 255 general court-martial prisoners were confined in Federal institutions. Of this group, all but 26 (10 percent) were confined for offenses, the chief charge of which was, of a nonmilitary nature (table XIII). Seven of these men were confined for "breaking arrest," which indicates that they were escape risks and the remainder of those in this category presented behavior or personality problems requiring special confinement facilities. In this group were 8 serving life sentences and 148 (58 percent) serving sentences of over 5 years as finally approved by the Secretary of the Navy (table XIV).

TABLE XIII.—*Number of men in Federal institutions by offense*

Murder	11	Fraud and embezzlement	9
Voluntary manslaughter	14	Forgery	4
Aggravated assault	24	Misappropriation	3
Involuntary manslaughter	2	Desertion	19
Rape	35	Breaking arrest	7
Morals offenses	40	Other naval offenses	1
Robbery	25	Assault and battery	3
Burglary	6	Other civil offenses	2
Housebreaking	9		
Larceny and theft	41	Total	255

TABLE XIV.—*Length of sentence as approved by Secretary of the Navy (Federals)*

Months	Number	Percent
19 to 24	4	1.57
25 to 36	23	9.02
37 to 60	80	31.37
61 to 120	82	32.16
121 and over	58	22.74
Life	8	3.14
Total	255	100.00

Summary and conclusions

1. The percentage of military offenders compared with nonmilitary offenders remains the same as it did for the last 6-month period, 75 percent.

2. There is no significant change as to the type of offenses noted, desertion continues to lead all military offenses and larceny and theft continue to account for the principal nonmilitary offenses.

3. Average length of sentence as approved by convening authority has dropped from 2 years 3 months to 2 years. Average sentence as approved by the Secretary of the Navy remains 1 year and 10 months.

4. Average time served by all releases for this 6-month period is 6 months 12 days compared to 7 months 11 days as previously reported for the first 3 months of the period.

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5. There were 46 less (255) general court-martial prisoners confined in Federal institutions at the end of the period than there were at the beginning of the period (301). Ninety percent of such offenders are serving sentences the chief charge of which is of a nonmilitary nature. This group includes 11 serving on charges of murder, 14 for voluntary manslaughter, 124 for aggravated assault, and 35 for rape.

SECTION III. CHARACTERISTICS OF OFFENDERS

Commitments by geographical areas.—Tabulations show that commitments were received from all naval districts except 17 and that 8 percent were committed from commands afloat. For convenience this is expressed in terms of naval districts and commands afloat. Information was available on 2,454 prisoners confined. All districts are represented except 17. The Eleventh Naval District contributed the largest number, or 16.22 percent; 198, or 8.07 percent, were from commands afloat, and all but 12, or 0.49 percent, of these from commands afloat, Pacific.

Probation violators.—During this period 97 probation violators were recommitted to serve the unexecuted part of their sentence. This represents 4 percent of the total intake for the period. This figure, of course, does not represent the total number who violated probation during the period since data is not available on those whose probation was terminated and discharges executed.

Previous military offenses.—Of the total population at the end of this period, 793, or 32 percent, had no previous military offenses during the current enlistment. The remaining 1,661 prisoners committed a total of 4,149 previous military offenses. Broken down by types of offenses, this represents 579 general courts martial, 1,034 summary courts martial, 891 deck courts, and 1,645 captains mast. The 2,454 prisoners confined as of December 31 committed a total of 6,603 military offenses (including current offense), or 2.7 offenses per man.

Branch of service.—Table XV shows the total men in confinement as of December 31, 1948, by branch of service. Naval personnel makes up 80.45 percent, Marine 18.86 percent, and the remainder are Coast Guard and merchant marine.

TABLE XV.—*Branch of service (population, Dec. 31, 1948)*

Branch of service	Number	Percent
Navy	1,728	70.42
Marine Corps	432	17.60
Coast Guard	13	.53
Naval Reserve	235	9.58
Marine Corps Reserve	31	1.26
Coast Guard Reserve	2	.08
Navy (inductee)	11	.45
Marine Corps (inductee)		
Coast Guard (inductee)		
Other	2	.08
Total	2,454	100.00

Age.—Average age of all men in confinement as of December 31, 1948, is 23 years 2 months, median age is 22 years 3 months, and age range is from 17 to 47; 509, or 20.8 percent, fall within the range of 20 years and below; 1,480 (60.48 percent) between 21 and 45; 331 (13.52 percent) between 26 and 30; 118 (4.82 percent) between 31 and 40; 10 (0.4 percent) over 40. Average age of the total population as to June 30, 1948, was 22 years 7 months.

Educational level.—Grade level as based on education claimed shows that the average grade completed was 8.97, median 8.98; 39 (1.77 percent) claimed below the fifth grade while 1,293 (58.6 percent) claimed completion of high school or above; 21 (0.95 percent) claimed completed work beyond the high-school level.

Race.—Table XVI gives the break-down of total population as of December 31, 1948, by race.

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TABLE XVI.—*Race*

Race	Number	Percent
White	2,226	90.71
Negro	215	8.76
Indian	3	.13
Filippino	5	.20
Other	5	.20
Total	2,454	100.00

Marital status.—Table XVII gives total population as of December 31, 1948, by claimed marital status.

TABLE XVII.—*Marital status*

	Number	Percent
Single	1,804	73.93
Married	598	24.51
Separated	2	.08
Divorced	18	.74
Widowed	18	.74
Total	2,440	100.00

State of residence.—A tabulation by States of the legal residence claimed shows that the ratio between general population of the State and percentage of prisoners claiming residence in the State is generally consistent. New York (7.97 percent,) Pennsylvania (7 percent), California (6.64 percent), and Texas (6.11 percent) are States claimed by the largest number of prisoners. They also rank among the first 10 in general population. All States and the District of Columbia were represented.

Distribution of naval prisoners, Federal Bureau of Prisons, Mar. 25, 1949

United States penitentiaries:	
Leavenworth, Kans	18
Alcatraz Island, Calif	1
Lewisburg, Pa	60
McNeil Island, Wash	26
Atlanta, Ga	40
Terre Haute, Ind	35
Oahu prison, Oahu, T. H	05
United States medical center, Springfield, Mo	8
Federal correctional institutions:	
Danbury, Conn	5
Milan, Mich	1
Sandstone, Minn	2
Seagoville, Tex	2
Federal reformatories:	
Petersburg, Va	3
El Reno, Okla	27
Chillicothe, Ohio	36
Total	241
7 penitentiaries	157
4 correctional institutions	10
3 reformatories	66
1 medical center	8
Total	241

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Captain MAGINNIS. I have some figures here with respect to the Navy. As of January 1 we had a total of 2,555 prisoners. We had 10 percent, exactly, in Federal institutions. There were 255 at that time. There are now 241. Only 10 percent of that number had been convicted of offenses which could be classified as a military offense.

Mr. RIVERS. What percentage?

Captain MAGINNIS. Ten percent. Those were transferred because of their rebellious and intractable nature and evidence of psychopathic attitudes and deviations, and some of them were sex psychopaths.

If it is of any interest, the type of offenders whom we have transferred are those convicted of major offenses. There are 11 convicted of murder. There are 14 convicted of voluntary manslaughter. There are 24 convicted of aggravated assault. There are two convicted of involuntary manslaughter. There are 35 convicted for rape. There are 40 convicted for morals offenses. There are 25 convicted for robbery. There are six convicted for burglary. There are nine convicted for housebreaking. There are 41 convicted for larceny and theft. There are nine convicted for fraud and embezzlement. There are four convicted for forgery. There are three convicted for misappropriation. There are 19 whose primary charge was desertion. There are seven who were convicted of breaking arrest. There is one convicted for other naval offenses. There are three convicted for assault and battery, and there are two convicted for other civil offenses. So, out of 255 persons so confined in Federal institutions under this authority which we now have, there were roughly 30—actually 27—who might be considered to have been convicted for military offenses.

So I suggest that indiscriminate use of this to get rid of personnel is not the policy of the Department.

All that the colonel said about the facilities in Federal institutions for the treatment of these individuals who have committed felonies and who remain for long terms is true.

In the naval service our personnel manning these institutions are men who enlisted in either the Navy or the Marine Corps as a career and to whom custodial work is not a chosen vocation. They do the best that they can, but we feel that the treatment the individual would obtain under Federal jurisdiction is much better when they are guided by those people who have that as their vocation and their life work.

Mr. BROOKS. This is a case where we have beaten the Hoover Commission to a decision?

Captain MAGINNIS. I think it is.

Mr. RIVERS. Let me ask you this question: This could be the first step toward the elimination of institutions like yours up at Portsmouth, and yours at Leavenworth, and integrating all of the Federal custodial or correctional institutions?

Captain MAGINNIS. We would like to retain in the future what we term our retraining commands. Presently we segregate our prisoners in two types of institutions. We have a retraining command and a disciplinary barracks. We would not be too regretful to see the disciplinary barracks taken over wholly by a Federal prison system, but we do feel that about 25 or 30 percent of the people who get into trouble, we can rehabilitate and bring back into the naval service, which is what we now do. We would want to retain that type of confinement activity.

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Mr. RIVERS. You could eliminate some of the existing ones?

Captain MAGINNIS. Yes. We would eliminate the disciplinary barracks which are the places where we now confine those people who will be discharged into civil life.

Mr. RIVERS. And you could also recoup their future value, to bring them back into the service?

Mr. SMART. Captain, may I ask one question to make it clear for the record? Those prisoners whom you release for confinement in Federal facilities are the ones you do not have any hope to restore to military service; is that right?

Mr. RIVERS. Yes; he does.

Mr. GAVIN. He just said that.

Mr. SMART. For civilian life; not military service.

Captain MAGINNIS. Those that we transfer into the Federal institutions are carefully screened in our disciplinary barracks before they are sent. By the nature of their offenses, as I read them here, they are not individuals whom we would bring back into the naval service.

Now, all of our general court-martial prisoners, those whom we believe are salvagable, we bring into retraining commands, as long as their sentence begins to run, or as soon as we identify them as being restorable, and prepare them for possible restoration to duty. Some of them may make it, and some may not.

Mr. BROOKS. Who does the screening?

Captain MAGINNIS. We do, at the places of confinement.

Mr. RIVERS. When you say "we" who is "we"?

Captain MAGINNIS. The Navy.

Mr. RIVERS. Are they trained for that vocation?

Captain MAGINNIS. They are, sir. We have several civilians in each institution who are classification experts and educational supervisers and technical supervisers for the whole institution, who maintains that.

Mr. RIVERS. I was kind of mixed up then because I heard the colonel say, with reference to the institution which my colleague has referred to, so frequently are they put together where they rub elbows with these hardened criminals that the thought was that maybe you could take these same "kids" and put them in an institution which you do not possess but is now under the Federal system of penitentiaries, where you might rehabilitate them and bring them back into the service.

Mr. HARDY. You can do that better in the retraining commands.

Mr. RIVERS. That is the testimony.

Captain MAGINNIS. Our testimony is that we would rather have them down in our retraining commands where we give them refresher training.

Mr. RIVERS. Then you can weed out the bad ones to whom I referred.

Captain MAGINNIS. We can weed them out almost permanently.

Mr. RIVERS. I see.

Captain MAGINNIS. There is an escape provision in our administrative procedure where we can take prisoners back from a Federal institution if they are strongly recommended and bring them back into our commands for study to decide whether we will accept their recommendation.

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Mr. HARDY. Do you sometimes use your retraining command for confinement of prisoners prior to sending them to your own correctional institutions?

Captain MAGINNIS. The retraining command, sir, is a correctional institution.

Mr. HARDY. I understand that.

Captain MAGINNIS. To the disciplinary barracks?

Mr. HARDY. Yes. Like the one you have at Portsmouth.

Captain MAGINNIS. Yes. We have a free flow between them. As a matter of fact, we have an airplane flight every 2 weeks. If we bring a prisoner into the retraining command whom we decide is not retrainable, or who exhibits traits of character which makes him completely useless, we transfer him to the disciplinary barracks.

Mr. HARDY. Then you may eventually transfer them to the Federal institutions?

Captain MAGINNIS. That is correct. If they continue and become even more rebellious, we propose them for transfer to the Federal institution, and they are so accepted.

Mr. BROOKS. Mr. Smart?

Mr. SMART. I want to raise one more question here just for the consideration of the committee.

That is the reciprocal authority of the various services to confine the prisoners of another service.

Let me give you a specific example which I ran into in October at Fort Knox, Ky. Godman Field lies immediately adjacent to it and is perhaps no more than a mile from the stockade on Fort Knox. Under the new set-up the Air Force, tries all of its court-martial cases. Godman Field, which has a small complement of troops of about 275 enlisted men and 30 or 40 officers, is maintained there to keep flying facilities for Reserve personnel at Louisville, Ky., and the surrounding territory. The day I went there they tried their first two special court-martial cases, but they have no jail there. Those fellows received sentences of 2 or 3 months of confinement, and since they had no jail and since the divorce was complete between the Army and the Air Force, they were not authorized to put these two Air Force prisoners, who were only going to serve 3 or 4 months and then go back to duty, over in the stockade at Fort Knox. So they put them in an airplane and flew them a hundred miles up to Fort Benjamin Harrison for confinement.

To me that is absolutely absurd. It is a waste of the taxpayers' money.

Here is where the problem becomes multiplied. Up and down the east coast are 16 or 17 radar stations all in the jurisdictional area of the First Air Force. In addition to that, we have many more of these small flying fields, for reserves, that are somewhat isolated from the major Air Force commands where they have confinement facilities but which are close to the Army facilities. It seems to me absurd that the services cannot work out some reciprocity for the confinement of men at each of those facilities where the confinement is of a minor, short-term character.

Mr. HARDY. This would take care of it, would it not?

Mr. SMART. I do not know.

Mr. HARDY. It sounds like it would to me.

Mr. SMART. I am wondering if the services contemplate doing that.

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Mr. BROOKS. I would like to hear from the Air Force, also. What do you think about it, sir?

Major ALYEA. I believe it is a good idea, sir, but I am not authorized to speak.

(Discussion off the record.)

Mr. SMART. That is exactly right.

Mr. BROOKS. What does the Coast Guard do?

Captain MAGINNIS. We now in the Navy, sir, accept prisoners from any service for temporary confinement in any of our facilities. We do hold Coast Guard prisoners in our confinement activities.

Mr. BROOKS. And the Coast Guard subscribes to your methods and procedure?

Captain MAGINNIS. Yes, sir. As a convenience to the Coast Guard it is done, because they do not have facilities of their own. We confine their prisoners for them.

We do the same thing for the Army or the Air Force if they request it, although we have no jurisdiction with them now.

Mr. LARKIN. On page 48, Mr. Chairman, lines 2 and 3, it says:

may be carried into execution by confinement in any place of confinement under the control of any of the armed forces, or in any penal or correctional institution under the control of the United States.

So you have statutory authority provided here for the first time to take care of what Mr. Smart points out, which I think is perfectly logical.

I think Mr. Smart is perfectly right that it should be that way. There has been an absence of statutory authority to do it to date. Perhaps on an administrative basis it has been done. It has not been done enough.

Certainly if this article is passed as is, why, there will be the authority to do it which has not heretofore existed in the statute.

Mr. Smart is perfectly right.

Mr. GAVIN. May I ask a question?

Mr. BROOKS. Mr. Gavin.

Mr. GAVIN. Does the Army have a similar program to the Navy's, to give these people an opportunity to return back into the service?

Colonel GARRISON. Yes, sir. The prisoners in the Army who get general court martial sentences and suspended sentences of dishonorable discharge with confinement of 6 months or less are not sent to disciplinary barracks. They are kept in Army guardhouses at various places, and there they frequently are restored to duty before their time is up. That is quite usual.

Mr. GAVIN. If the sentence is what?

Colonel GARRISON. If the sentences are 6 months or less than 6 months they are never sent to disciplinary barracks, even though the sentence may include dishonorable discharge and suspension. They have a chance and are given a chance there to make good. After they get to the disciplinary barracks they are very carefully classified by people we have employed for that purpose, who are well trained for that. There they may be recommended for a restoration to duty, and if they come within the accepted classes under the Secretary's policy, they are then sent to a military training company and allowed to take a short course there and then allowed to reenlist in the service.

Mr. GAVIN. If the sentence is 6 months or more, then what?

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Colonel GARRISON. That is when they go to the disciplinary barracks, if they have a sentence in excess of 6 months.

Mr. GAVIN. If they are given a sentence of more than 6 months and a dishonorable discharge, do they still have an opportunity to be restored to duty?

Colonel GARRISON. Yes, sir; and there have been a few cases where on strong representation from the Federal institution where they are confined, men were taken out of places like that and given restoration.

Mr. SMART. I think it should be pointed out there, Mr. Gavin, that the Secretary of the Army has a policy wherein he prescribes certain types of offenses, such as larceny, where even though the discharge has been suspended by the convening authority, regardless of that fact, when the man has served the appropriate amount of his sentence the dishonorable discharge will be executed and he will be dishonorably discharged and he will not be given an opportunity to reenlist under any circumstances.

Colonel GARRISON. That is true. I want to insert in the record at this point the policy of the Department of the Army on the matter of restoration to duty and the present status of Army general prisoners.

ARMY POLICY WITH REFERENCE TO RESTORATION TO DUTY OF GENERAL PRISONERS

The policy of the Army as to restoration of general prisoners over a period of years has remained essentially the same; that is, "to encourage all physically, mentally, and morally qualified general prisoners to earn restoration to duty with a view to eventual honorable discharge."

In the absence of exceptional circumstances, conviction of serious-type civil offenses has precluded restoration, as has conviction of desertion or absence without leave from units engaged in combat, unless the offender was an obvious victim of combat exhaustion or had considerable prior good combat service.

During active combat operations in the war, restrictions as to the nature of offenses committed were somewhat relaxed when it appeared that enlistment in a combat unit subjected a soldier to personal danger, and the possibility existed that he might expiate his crime by valorous service or by even laying down his life on the field of battle. In the matter of restoration by enlistment in the peacetime Army it has been deemed necessary to make the restoration program less inclusive by a return to the general policy barring the enlistment of those convicted of serious civil type offenses.

DEPARTMENT OF THE ARMY,
OFFICE OF THE ADJUTANT GENERAL,
Washington 25, D. C., April 5, 1949.

Memorandum for Chief, Legislative and Liaison Division.

Attention: Col. John P. Dinsmore, GSC, Room 3C937, The Pentagon.

Subject: The number of Army institutions and individuals possibly affected by article 58 of the Proposed Uniform Code of Military Justice (H. R. 2498).

1. As of April 1, 1949, approximately 2,700 general prisoners were confined in Federal institutions under the supervision and control of the Attorney General of the United States, and less than 4,100 were in Army disciplinary barracks.

2. General prisoners confined in post, camp, and station guardhouses are not at this time considered, as they may or may not ever be sent to disciplinary barracks.

3. As of April 1, 1949, there are in operation five United States disciplinary barracks, with population as indicated below:

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United States disciplinary barracks, Fort Leavenworth, Kans	980
Branch United States disciplinary barracks:	
Milwaukee, Wis	644
Camp Cooke, Calif	989
New Cumberland, Pa	971
Fort Hancock, N. J	[1] 437
	4,021

[1] Includes prisoners employed on Fort Jay Work project, which is a detachment of Fort Hancock.

Of the institutions named above, the first three are permanent-type installations, and the last two are temporary, barracks-type, wire-enclosed installations.

4. The branch United States disciplinary barracks, Fort Hancock, N. J., was established primarily as a receiving station for general prisoners arriving in the zone of the interior from the European theater. It is limited to a maximum capacity of 300 prisoners. It is planned that this institution will be closed whenever funds are obtained for the conversion of hospital cars to prison cars so that these prisoners may be taken directly from shipside to an inland disciplinary barracks.

5. Should H. R. 2498 be passed with article 58 as now written, its possible effect on Army institutions and individuals is estimated as follows:

As soon as practicable after the enactment of this legislation, approximately 1,500 general prisoners confined in United States Army disciplinary barracks for civil-type offenses, but not now eligible for transfer to Federal institutions, would become so eligible under the provisions of article 58, and could be transferred. The 2,500 general prisoners remaining in the custody of the Department of the Army, and who are now serving sentences for military-type offenses, could be confined in two United States Army disciplinary barracks. The number of disciplinary barracks could then be reduced from five to two, exclusive of Fort Hancock, N. J. This would release approximately 90 officers and 1,200 enlisted men for assignment elsewhere in the Army. The services of approximately 70 civilian employees now required in the disciplinary barracks could also be dispensed with.

At some future time thereafter it may be possible to close one of the two remaining disciplinary barracks and retain the other as a rehabilitation training facility. This would release 42 officers and 602 enlisted men for assignment elsewhere in the Army, and the services of 27 civilians now employed in the disciplinary barracks would no longer be required.

For the Director of Personnel and Administration:

LLOYD R. GARRISON,
Colonel, AGD,
Chief Correction Branch, AGO.

Mr. SMART. What offenses does that include, other than larceny?

Colonel GARRISON. They are felonious offenses, those offenses which are punishable as felonies in the District of Columbia or in the various States. That has been the Army procedure, where largely, since the days of the disciplinary barracks' first authorization in 1915—I have seen correspondence between General Crowder and Secretary of War Garrison in which they upheld that thought.

Mr. SMART. My point there is that I think it is a foolish thing to permit a convening authority on a review of a case to suspend a dishonorable discharge when, as a matter of fact, we know that that discharge will subsequently be executed. It creates a lot of false hopes in the minds of this boy's parents that the dishonorable discharge is suspended, and he has a chance to work himself out when, as a matter of fact, he does not have a ghost of a chance.

I think there should be some kind of a policy where they have a statement as a matter of policy of the Secretary of the Army that he is going to be dishonorably discharged and that the convening authority cannot raise any false hopes by suspending that dishonorable discharge upon the initial review.

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Mr. BROOKS. You think that should be a question of policy rather than law?

Mr. SMART. Yes; but it is bad the way it presently exists.

Mr. BROOKS. We will commend your ideas there to the services.

Mr. RIVERS. How long has the Navy been practicing this procedure?

Captain MAGINNIS. This retraining procedure or commitment to Federal institutions?

Mr. RIVERS. Both.

Captain MAGINNIS. The transfer to Federal institutions, I think, goes back into 1908 or thereabouts. I could not give you the exact figure. The rehabilitation set-up was established in 1944 and has been carried on since.

Mr. RIVERS. It is not statutory, though?

Captain MAGINNIS. It is not statutory. It is policy.

Mr. BROOKS. Gentlemen, this is very interesting. I think we ought to have lots more information on this subject. I am wondering if the services could not give us some figures on the number of men in these institutions and the arrangement of them according to institutions, and the number of institutions which would be affected by such a program so that we could put that in the record and use it on the floor of the House?

(See p. 1105.)

Mr. BROOKS. I do not think there is any objection to this provision. If there is no objection it will stand adopted as read.

The hour being 4:20, the committee will stand adjourned until next week. We will have to give notice, because Monday morning the committee intends, as I understand it, to go down to observe the swearing in of the Secretary of Defense. Then, on Tuesday, we will have the regular committee meeting.

(Thereupon, at 4:21 p. m., Saturday, March 26, 1949, an adjournment was taken to meet at the call of the chairman.)

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UNIFORM CODE OF MILITARY JUSTICE

WEDNESDAY, MARCH 30, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITEE No. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. L. Mendel Rivers (vice chairman) presiding.

Mr. RIVERS. The chairman won't be here for a moment, so he has requested I take over until he gets here.

Mr. Smart, what is on the program this morning?

Mr. SMART. Mr. Chairman, you will recall that it was concluded to withhold articles 22 to 29, inclusive, for a special day of hearing at which time Professor Morgan and witnesses from the departments would be heard.

Today is a convenient day for that. Professor Morgan is here. The Undersecretary of the Navy, Mr. John Kenney, is here. The Judge Advocate of the Navy, Admiral Russell, is here. They are prepared to open up that question today. So with the indulgence of the committee, may I suggest that we go back to Article 22 and you consider the proposition as to whether or not you will keep the article as written, which permits command to appoint the courts, or whether you shall change it and say that a superior command or a judge advocate will appoint courts from a panel of officers submitted by command.

Mr. RIVERS. That is article 22.

Mr. SMART. Article 22.

Mr. RIVERS. I am glad to see the chairman back.

Who is the first witness?

Mr. SMART. Professor Morgan.

Mr. RIVERS. Professor Morgan.

Professor MORGAN. I understand, Mr. Chairman, that you wanted simply to get my views on this matter of command control by the appointment of a panel, is that right, sir?

Mr. RIVERS. That is right.

Now do you want to take over, Mr. Chairman?

Mr. BROOKS [presiding]. That is correct, yes, sir.

Professor Morgan. Well, my notion about its practicability is stated as well as it could be stated in the statement that you got from General Riter, who appeared here in behalf of the American Legion on that.

I think that panel idea is one that theoretically is very attractive. I think it will not work practically.

I was here when Mr. Farmer read his statement about it. He conceded that in 99 cases out of a hundred even by that system the

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members of the court would come from the command of the accused and the command of the commanding officer under whom they served.

Now the panel idea is proposed in order to avoid as I understand it the indirect influence of the commanding officer upon members of the court and not any direct influence on them because of the fact the code specifically provides against any attempt to influence the officers or to censure them thereafter. It also specifies that any violation of that prohibition is an offense under proposed article 96.

In peacetime there is a possibility that it will work. In wartime I suppose that is absolutely impossible, for a commander to determine in advance what men he could spare for a panel.

We think we have removed the influence of the command as far as that is humanly possible by the provision which I suggested to you which forbids the command to censure any person connected practically with the administration of the court-martial system or to attempt improperly to influence them.

We think also that it is very largely removed by the position in which the code places members of the court. These officers who are on the court under the new set-up really correspond to the civilian jury. We have a law officer who instructs them on the law.

The instructions are made a part of the record. The instructions are subject to review. The board of review which is situated far away and far from the influence of command reviews both law and facts and has power to approve only so much of the findings and so much of the sentence as they think ought to be approved under the terms of the contract.

There is also provided as you know in the so-called Judicial Council a review of the law and that is a civilian body. Consequently, we believe that we have as thoroughly removed command influence as is humanly possible.

It is true whether you have the panel system or any other system, if the commanding officer is determined to beat it he can beat it.

Mr. ANDERSON. Mr. Chairman.

Mr. BROOKS. Yes.

Mr. ANDERSON. Will you permit an interruption?

Professor Morgan. Yes.

Mr. ANDERSON. Do you think that if the members of the court martial were selected from a panel by the judge advocate in place of being selected as provided for in part V, it would weaken discipline?

Professor MORGAN. I am strongly of the opinion that it would as a matter of fact disrupt the commanding officer's control over his officers for other than courts martial. That is true.

Mr. ANDERSON. We all recognize that.

Professor MORGAN. I do not know, sir, just what effect that would have on discipline. I suppose the system contemplates that these officers will go back to line of duty as soon as they are relieved from this court martial duty. They will be entirely subject to discipline there. Whether it would have any effect, you mean on the discipline of the troops rather than the discipline of the——

Mr. ANDERSON. I mean, we recognize the fact that in a military organization you must have discipline.

Professor MORGAN. Yes.

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Mr. ANDERSON. You are attempting in this bill to not only see that every man is tried impartially by, you might say, a jury of his peers——

Professor MORGAN. That is right.

Mr. ANDERSON. But that the case can be properly reviewed.

Professor MORGAN. That is it.

Mr. ANDERSON. Without weakening the necessary discipline within the military organization itself.

Professor MORGAN. That is quite right, sir.

Mr. ANDERSON. But my fear is that if we adopt this panel idea perhaps we do weaken the discipline which a commanding officer no matter what his rank, has over those immediately under his command.

Professor MORGAN. Certainly you remove them from his control for a period at any rate. But I think you never want to forget that in this panel there would also have to be enlisted men.

Mr. ANDERSON. That is if the accused desires them.

Professor MORGAN. Well——

Mr. ANDERSON. If the accused wants those enlisted men.

Professor MORGAN. Exactly. But don't you see before the commanding officer can make this panel he has to contemplate whether or not enlisted men will be on that panel. It would be impossible for him to make a panel I suppose for each trial because you don't know quite when they are going to start, and so forth.

So the commanding officer, according to this theory, will send a list of people up to the higher echelon, men that will be kept apart for court-martial duty. Now, during that period it is bound to weaken discipline with reference to those particular persons.

They are not going to be subject to the ordinary command, and so forth, unless you say why of course they can be. Then that means your panel is going to be entirely disrupted and every time the officer moves or decides to move these particular people out he has to send up substitutes, and so forth. So it seems to me that it may have an indirect effect upon discipline.

How it can remove command influence finally with reference to these enlisted persons is just beyond me.

Mr. ANDERSON. Thank you very much.

Mr. BROOKS. Any further questions of Professor Morgan?

Mr. RIVERS. Professor?

Professor MORGAN. Yes, Mr. Congressman.

Mr. RIVERS. It has been observed that this bill is not so drawn as to make it sufficiently elastic to write a provision in there creating a separate judge advocate's corps. Do you understand it that way?

Professor MORGAN. Certainly not, sir. I think that is not true. On the corps, Congressman Rivers, that was outside of our mandate as you know. It wasn't in our precept. We did not discuss it.

Mr. RIVERS. You didn't discuss it?

Professor MORGAN. Well, we couldn't discuss it because we had so many other things to do and it was definitely stated to be outside our precept, you see.

Mr. GAVIN. Why?

Professor MORGAN. Well, we were appointed by the Secretary of Defense, Congressman Gavin, with precept as to what we were to do, and that had to do with military justice and not with the National Defense Act.

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Mr. RIVERS. Let me read you this:

To unify, consolidate, revise, and codify the Articles of War, the Articles for the government of the Navy, and the disciplinary laws of the Coast Guard, and to enact and establish a unified code of military justice.

Professor MORGAN. Yes.

Mr. RIVERS. You mean to say that title is not suffciently elastic that it would be germane to that subject.

Professor MORGAN. I am telling you that the committee decided.

Mr. RIVERS. Well now——

Professor MORGAN. We had a debate on that.

Mr. RIVERS. Yes.

Professor MORGAN. Now if you want my personal opinion?

Mr. RIVERS. I don't want to embarrass you because I have too much regard for you.

Professor MORGAN. You see, you have me on a spot.

Mr. RIVERS. You have done a pretty fair job.

Professor MORGAN. But I am used to being put on the spot.

Mr. RIVERS. Mr. Vinson doesn't like us—this is off the record.

(Statement off the record.)

Professor MORGAN. Congressman Rivers, officially you can embarrass me. Personally it is impossible.

Mr. RIVERS. Well we have pretty tough hides ourselves.

Professor MORGAN. Well, now, let me answer your question.

Mr. RIVERS. Yes.

Professor MORGAN. Under those conditions, after we had made that decision, we deliberately drew the code so that it would apply whether you had a corps or whether you didn't have a corps.

Mr. RIVERS. I see, sir.

Professor MORGAN. And I think you will find no provision in this code that won't apply equally to the Army with its corps, and to the Navy with is present set-up and to the Air Force with its present set-up.

Mr. RIVERS. So this thing could be ammenable to any such creation as that. I think we ought to recognize that.

Professor MORGAN. Sure.

Mr. RIVERS. But you did not under your directive consider that in your group.

Professor MORGAN. Didn't what?

Mr. RIVERS. You didn't consider a separate corps in your discussion?

Professor MORGAN. We did not spend any time on it.

Mr. RIVERS. I see, sir.

Professor MORGAN. Personally, it was a matter that I would have welcomed a discussion on. I would have welcomed a discussion on it, but as you can see from my standpoint——

Mr. RIVERS. Yes.

Professor MORGAN. You remember, I never had any service in the field. In the First World War, I had 21 months in the Judge Advocate General's department.

Mr. RIVERS. Yes.

Professor MORGAN. I don't know what has happened to the Army organization since that time. If we were going to go into that we should have had to have a lot of evidence and testimony from all the three services to see exactly the way the corps would affect the other

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ices. Under Congressman Elston's bill we already have it in the ny.

Mr. RIVERS. Have you had any information——

Professor MORGAN. It started in only in February, you remember.

Mr. RIVERS. Yes.

Professor MORGAN. If it works well then it may very well be you l say it ought to go in the Navy and in the Air Force. You have hance here for what Holmes used to call "experiments."

Mr. RIVERS. Yes.

Professor MORGAN. You remember Justice Holmes used to say Vell, you ought to let this State do this, that State do that and the ner State do the other" because you have great laboratories for periments and legislation here. I think you have a great field for perimentation here now. You put this in the Army. Doubtless our committee considered it very thoroughly, Congressman Elston, ecause I remember both the Secretary of War and General Eisen-ower appeared against it.

Mr. ELSTON. Yes.

Professor MORGAN. Your committee nevertheless thought it ought o be tried.

Mr. RIVERS. They brought up the heaviest artillery they could get.

Professor MORGAN. I beg your pardon?

Mr. RIVERS. I say the heaviest artillery available was brought up n opposition.

Professor MORGAN. Yes. Personally, I read all that material in he hearings about your committee, Congressman Elston, and also before the full committee, and so on. I saw what happened.

Mr. RIVERS. The only thing they didn't bring up is the new guided missiles.

Professor MORGAN. And let me say this, I didn't feel at all badly that we didn't go into the corps since you already had it in the Army, and I thought here was a chance for experimentation.

Mr. RIVERS. Yes.

Professor MORGAN. If this thing works well in the Army, then you may want later to put it in both the other services. You will hear the members of the services after me on this matter of the corps. Under Secretary Kenney and Admiral Russell will speak to you from that standpoint.

Mr. RIVERS. They are very persuasive gentlemen, I know that.

Mr. BROOKS. Professor, what do you think would be a fair trial period?

Professor MORGAN. I should think you would have to try it for a couple of years.

Mr. BROOKS. And then you could judge the result in that time.

Professor MORGAN. I hope we are going to have peace for two years, which would give a good peacetime sample of how it works.

Mr. BROOKS. Yes.

Professor MORGAN. If we get the statistics that we think we are going to get now under this set-up with the judicial council and the three Judge Advocate Generals reviewing the workings of the code in the different services you ought to get statistics on the administration of justice in the Army, Navy, and the Air Force under whatever system you put in, and in 2 years you can tell how it is working.

Mr. BROOKS. Well, that might be a part of the duties of the Judicial Council, too, mightn't it?

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Professor MORGAN. Oh, yes. It is.

Mr. BROOKS. To make recommendations on that point.

Professor MORGAN. Oh, yes. I think part of the duties of the judicial council would be to see and consider that kind of thing.

Mr. RIVERS. You mean an evolving process

Professor MORGAN. Yes.

Mr. RIVERS. To observe it.

Professor MORGAN. Observing, yes.

Mr. RIVERS. Yes.

Professor MORGAN. Sure. Because these things will come up through the different JAGS with the Judicial Council they are to meet at least once a year. There is nothing to prevent its meeting more often and surveying just how these things are done. The Judicial Council could report on that particular thing.

You would then be able to see whether military justice under this code with a crops in the Army is any better than in the Navy and in the Air Force without a corp.

You will also, I suppose, be able to tell whether or not the corps idea with its independent promotion list, Congressman Elston, will attract better men into the JAG of the Army than into the JAG of the Navy.

Mr. BROOKS. Professor, Mr. Elston wanted to ask you a few questions.

Professor MORGAN. Yes.

Mr. Elston. Professor, I am certainly glad to have your explanation. I was under the impression that your committee was more or less opposed to a separate Judge Advocate General's Corps from the fact that you didn't include it in this bill.

Professor MORGAN. No.

Mr. ELSTON. I take it we are not to consider that you are opposed to it.

Professor MORGAN. I think you certainly can't say that the committee was opposed to it as a committee because we just didn't consider it.

Mr. ELSTON. Yes, all right. I am glad that is in the record.

Professor MORGAN. All right.

Mr. ELSTON. Now on this matter of experiment——

Professor MORGAN. Yes.

Mr. ELSTON. Go along for a few years and see how things work out.

Professor MORGAN. Yes.

Mr. ELSTON. I am not so sure that is a good idea because you would have to have complete cooperation from the service before you would be able to determine whether or not it was working out well

Professor MORGAN. Well, you will to a certain extent. But I hope you won't forget that if you put in this Judicial Council—whether you call it a court of military appeals or not, whatever it may be—that a portion of the function of that Judicial Council is to observe the work of these three different Departments.

Mr. ELSTON. Well, they principally pass on cases, don't they—individual cases?

Professor MORGAN. I know, but they also have to investigate the general operation of the code, you see, and make recommendations with reference to it. That is a part of their duties under this set-up here.

Mr. ELSTON. Well, they could pass on those questions either way. You could not set up the separate corps or you could set it up.

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Professor MORGAN. No. I don't suppose they would do that unless in considering the matter—for instance when they report there's nothing to prevent the Congress from asking them their reports on the operations of these Codes and from getting their recommendations. They are supposed to give recommendations for amendments.

Mr. LARKIN. Yes. 67 (g).

Professor MORGAN. 67 (g), Congressman Elston.

The Judicial Council and the Judge Advocates General of the armed forces shall meet annually to make a comprehensive surveys of the operation of this code and to report to the Secretary of Defense and the Secretaries of the Departments any recommendations relating to uniformity of sentence, amendments to this Code, and any other matters deemed appropriate.

Mr. ELSTON. Well, I am just wondering, though, if the service is against the separate corps—and they are and there is no use kidding ourselves.

Professor MORGAN. I know.

Mr. ELSTON. They are against a separate Judge Advocate General's Corps.

Professor MORGAN. I think you are right.

Mr. ELSTON. Now are they going out and try to make a good record through a separate corps, and if they don't try to make a good record I am just wondering whether the Judicial Council will be in a good position to make recommendations?

Professor MORGAN. Well——

Mr. BROOKS. If I can say this right here, Professor, just before you talk, I think it is a little unfair assumption there because I was just informed now for instance that the Army was delighted with the present set up of the separate corps.

Mr. ELSTON. I don't want to reflect in the least on them because I know they are honest and sincere about it. But the fact remains that just a year ago General Eisenhower and everybody else from the Army came down and vigorously opposed a separate Judge Advocate General's Corps, even coming down after our subcommittee had reported on it.

Professor MORGAN. I know.

Mr. ELSTON. And urging the full committee to overrule the subcommittee and provide otherwise.

Professor MORGAN. Yes.

Mr. ELSTON. Now, that is the reason why I say I am not certain that they are going to give it a fair trial.

Professor MORGAN. Well, I think you can't be certain, Congressman, about any of these things. As I say, there isn't any rule you can lay down that the people can't beat if they want to beat it.

Mr. ELSTON. Well, that is the point I am making.

Professor MORGAN. There is just no doubt about it. You know the rule is laid down in civil cases, that the court shall not comment on the weight of the evidence or the credibility of the witnesses.

Mr. ELSTON. And then you hear the emphasis the court systems put on a statement which is sufficient of itself to indicate his opinion.

Professor MORGAN. I don't know whether you knew Judge Huff of the second circuit. Judge Huff said to me once, when we were considering that in the Commonwealth Fund Committee—

The worse judge I ever knew on the bench and the best judge I ever knew on the bench could let the jury know exactly how he felt about every witness and the whole case without violating that rule in the slightest degree.

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Mr. ELSTON. That is right. There wouldn't be a thing in the record indicating his sneer or his smile.

Professor MORGAN. Not a thing.

Mr. DE GRAFFENRIED. Or the tone of his voice.

Mr. ELSTON. Or the tone of his voice.

Professor MORGAN. Or the way he reads the instructions (demonstrating intonations): "if you find so and so and so and so."—"If you find so and so and so and so."

Mr. ELSTON. "But of course if you find so and so."

Professor MORGAN. Oh sure. So I say none of these things that you can put on paper will work if the people who are to administer them are determined to lick them. I agree, Congressman, that this is a matter of judgment. I am just giving you my best judgment on the thing.

I told you that the committee didn't have a chance to thresh the whole thing out. I think the opinions of the members of the service as to practicability and so forth and as to whether it will operate in the way that you are hoping it will operate are certainly worth more than mine would be because you see I just don't have the same data that they have.

Mr. ELSTON. Of course, my own notion is we ought to hear from them and get their viewpoint.

Professor MORGAN. Surely.

Mr. ELSTON. But at the same time this committee went into the matter very thoroughly last year.

Professor MORGAN. Yes.

Mr. ELSTON. And it was, I think, the unanimous or close to the unanimous opinion of the full committee we ought to have a separate corps.

Professor MORGAN. You don't want to be like the judge who said "Sure I will hear him, but I got him licked right now."

Mr. ELSTON. That is why I said we ought to hear from them.

Mr. BROOKS. Well, may I say this, that I doubt that this subcommittee has the time to give the matter full consideration of a separate Judge Advocate Corps for these two Departments. And I doubt also that it has the jurisdiction to do it. Of course the committee can do anything it wants, but it was assigned this one particular bill which is a uniform code of military justice.

If our idea is to unify the Judge Advocate General's Department of each service in this bill, I believe we are transgressing on our jurisdiction.

Mr. ELSTON. Then, Mr. Chairman, is it within your jurisdiction to set up a Judicial Council?

Mr. BROOKS. It is a part of this bill.

Professor MORGAN. Oh, yes; I think it is.

Mr. ELSTON. The fact that something is in the bill does not mean you have to do it.

Mr. BROOKS. I am not trying to tell the committee what to do. I am merely expressing my views on it. We were assigned this bill.

Mr. RIVERS. Will this bill repeal existing Army regulations?

Professor MORGAN. I didn't hear you, sir.

Mr. LARKIN. As far as the corps is concerned?

Mr. RIVERS. Yes.

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Mr. LARKIN. No. The provision for the corps in the Elston bill was an amendment to the National Defense Act.

Professor MORGAN. The National Defense Act.

Mr. LARKIN. That is not repealed, modified or affected in any way.

Mr. RIVERS. That is the only way we can get it through the lesser body at the other end of the Capitol.

Mr. BROOKS. Any further questions?

Professor MORGAN. Was there anything else you had in mind for me, Mr. Chairman?

Mr. ANDERSON. I understand, Mr. Chairman, Professor Morgan told me earlier he was hoping to get away early today because I think he has an engagement elsewhere.

Mr. BROOKS. Professor Morgan, we really appreciate your coming here, and I am sure Mr. Anderson who has been wanting to talk to you for several weeks especially appreciates it. But I voice the view of the whole committee I am sure.

Professor MORGAN. Mr. Chairman, I am really greatly obliged for the courtesy the committee has shown me. I know you don't need me on these separate articles. You can see that Mr. Larkin knows just as much about this as I do and probably considerably more.

Mr. BROOKS. We needed you on this particular article and your views are very persuasive.

Professor MORGAN. Yes. Thank you so much, sir.

Mr. ANDERSON. Thank you.

Mr. BROOKS. Thank you, sir.

Mr. SMART. Mr. Kenney.

Mr. BROOKS. Have a seat, Mr. Secretary.

Secretary KENNEY. Mr. Chairman.

Mr. BROOKS. We have Under Secretary W. John Kenney of the Navy. We are happy to have you here, Mr. Secretary. I believe this is the first time you have testified before this subcommittee.

Secretary KENNEY. Yes.

Mr. SMART. Mr. Chairman, I have previously distributed copies of Mr. Kenney's statement and they are before you now.

Mr. BROOKS. Thank you.

STATEMENT OF HON. W. JOHN KENNEY, UNDER SECRETARY OF THE NAVY

Secretary KENNEY. At the outset, Mr. Chairman, I would like to express the appreciation of all of us for the very, very fine work Professor Morgan has done on this. He was the chairman of our committee who drafted this bill and I can assure you he was a rough task master. He had us working 2 days a week there long hours for many months.

I have a prepared statement, which is not very long, which I think expresses my views probably better than if I stated them and with your permission I would like to read that statement.

During the initial stages of the hearings on this bill, this committee heard much criticism directed at the so-called command control of courts martial, and at this bill for failing to eliminate such control. I appreciate this opportunity to state the views of the Navy Department with respect to this problem, and to clear away some of the emotion mists that surround it.

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I am hopeful that when I am through, you will agree with me that the uniform code of military justice is sound in this regard, and that to change the method provided therein for convening and appointing personnel of courts martial would be not only unnecessary but unwise.

At the outset, I believe the committee should, and does, recognize the very basic fact that the military services are fundamentally different in nature from civilian society. Judge Robert P. Patterson, who as you all know, was Secretary of War for many years, an eminent jurist and a man who had great practical experience in the Army in the First World War as a foot soldier, expressed this comment at one time:

> Many of the critics overlook the place of military justice in the Army or the Navy. An army is organized to win victory in war and the organization must be one that will bring success in combat. That means singleness of command and the responsibility of the field commander for everything that goes on in the field. The Army has other functions such as feeding, medical care, and justice, but they are subordinate. You cannot organize an army to carry out those functions principally. And when critics say you ought to have a completely independent judiciary, they overlook the primary purpose of the Army, namely, safeguarding the Nation and winning the war.

In order to be effective in carrying out the assigned responsibility of a military force—success in battle—good discipline is essential. The elements of discipline is an intangible; it is that impalpable factor which distinguishes a crack outfit from a mediocre one.

The existence of discipline depends in large measure upon the amount of respect which the personnel of the unit have for the commanding officer—respect for his ability, his fairness, and his authority.

To subtract from the commanding officer's powers of discipline through courts martial can only result in a diminution of his effectiveness as a commander. He is the man who is cognizant of the needs of his command—he knows the men and their problems.

And he knows the character of the courts martial that are required and in my opinion is the man best qualified to appoint a court.

The appointment of courts by commanding officers does not represent, nor has it resulted in, improper control of the administration of justice. The Navy believe that the system of military justice works well. Of course, an occasional miscarriage receives widespread publicity, but no mention is made of the thousands of cases in which justice is fairly meted out.

Our studies indicate that the conviction of an innocent man is rare indeed, whereas the guilty are usually punished. Sentences which are unduly severe as originally imposed are ultimately corrected in the review process of naval justice. The same conclusion was reached by the General Court Martial Sentence Review Board, of which Prof. Arthur John Keefe of Cornell University was chairman, which reviewed over 2,000 general courts-martial cases in 1946.

This Board determined that the sentences of naval general courts-martial prisoners after full departmental review were reasonable and just. It found that sentences imposed by courts martial in cases involving civilian type offenses compared favorably with those imposed by civilian criminal courts.

Authority and responsibility go hand in hand. If we are to lay upon commanding officers the grave responsibilities inherent in carrying out a battle mission, we must also endow them with the authority by which they can secure the maximum effective effort from every

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man in the organization. Authority is not an evil thing in itself. It is bad only when it is exercised without wisdom, dignity, and restraint.

One of the best guaranties against such arbitrary exercise of authority is the high degree of personal integrity of our officers, a factor which I believe has been completely overlooked in the previous testimony before this committee. In my opinion, nothing could be more harmful to the maintenance of good discipline than taking away from the commander his power to provide for the proper administration of justice within his command.

I should like to pass now to a discussion of the possibility under this proposed bill of command appointment of courts martial influencing the outcome of cases. In drafting the bill, we have attempted to provide as many safeguards for the accused as practicable, and I believe that the result is a system in which a man tried by court martial will be given as fair treatment as is humanly possible.

First of all, Article 32 provides for a thorough and impartial investigation before charges may be referred for trial. During this investigation, the accused is entitled to be represented by counsel, which is to be provided for him unless he desires counsel of his own choice.

Under article 34, the convening authority may not refer charges to a general court martial unless trial is warranted by evidence indicated in the report of the investigation. Assuming that an accused is brought to trial before a general court, he must, and I should like to emphasize this point, be provided with a defense counsel who is a trained lawyer, unless he chooses counsel of his own.

Furthermore, there will be assigned to every general court martial a law officer who must be a trained lawyer, who is authorized to rule with finality upon such interlocutory questions as admission of evidence. Article 54 is of fundamental importance since it makes mandatory the keeping of a record of all general courts martial, which record, it is intended, shall be a verbatim transcript of the proceedings.

In the event of conviction, the review procedures provided by the uniform code afford excellent protection to the accused. First, the case is reviewed by the convening authority, who must secure the advice of his staff judge advocate; he may diminish or abolish the sentence, but he may not increase it.

The convening authority must then forward the record to the Judge Advocate General, who must refer each case involving a severe sentence to a board of review composed of not less than three trained lawyers. Here, the case is scrutinized thoroughly both on the law and on the facts, and if the board of review does not affirm the findings and sentence, it may order the charges dismissed.

In the event that the board of review sustains the conviction and sentence, the accused has the right to petition the Judicial Council, composed of the ablest civilians available, for a review of the case on the law. The Judicial Council has power to order the dismissal of charges if it finds error of law.

The protections from improper influence given the accused have the greatest effect in the review processes at levels higher than the convening authority. It should be noted that once the convening authority has passed upon the case, it goes into the hands of completely disinterested persons, some military and some civilian, but none of whom are in the chain of command.

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The system of review provided in this bill guarantees that the ultimate disposition of a general court martial case will be entirely free from any taint of improper domination and will be based upon detached, objective consideration.

But, in order to go even further in establishing free action for our courts, we have incorporated article 37 into the code, making improper or coercive influence unlawful. The language of this article is almost identical with that inserted into the Articles of War by this committee last year in the Elston bill. I consider it a most sound and effective means of protection. If any person attempts to influence the outcome of any case, he will have committed an offense under the code which is punishable under article 98. Furthermore, if any person criticizes any of the personnel of the court concerning the exercise of their functions, he, too, will have committed an offense under the code. No person sitting as a member of a court, or serving as law officer or as counsel, need fear receiving any reprimand from his commanding officer indicating displeasure at the court's action. Under article 37, it would be unlawful to insert in such a person's record an admonition which might affect that officer's entire career.

It has been suggested that one means of minimizing command influence would be for the convening authority to establish panels of officers for duty as members of courts martial, from which panels his staff judge advocate or legal officer would appoint individuals for a given trial.

Such a procedure presupposes that all officers put on the panel are available for court-martial duty at any time. This is not the case in actual practice, simply because the needs of the service, particularly so in the Navy where they are at sea, make their availability unpredictable.

Changes in the personnel comprising such a panel could not, in the face of a statute authorizing the staff judge advocate to appoint them, be made after such appointment.

The result would inevitably handicap the commander in the discharge of his duties, and in time of war the consequences might be serious. Furthermore, the suggested method also presupposes that one panel will do for the trial of all types of cases.

That is not true. For example, the trial of an enlisted man for theft would not require members with special qualifications or particular seniority, whereas the trial of the captain of a battleship for negligently hazarding his vessel would call for senior officers of seagoing and technical experience.

In closing, I should like to express to the members of the committee my belief in the merit of the bill which you are considering. It is the result of long and careful study, of the free interchange of ideas, of an awareness of the need for preserving the rights of individuals to the fullest extent possible in a military organization.

At the same time, we have attempted to provide a system which will be workable from an administrative standpoint and will not create such a mass of technical obstacles as to render the accomplishment of the armed forces' primary mission a hopeless task. I am hopeful that this bill will receive the support of Congress and be enacted into law.

There is one further point on which I would like to touch for a moment and that is the point of the separate corps. You will hear more in detail on that from Admiral Russell, the Judge Advocate

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General of the Navy, who is much more qualified to comment on that than I.

But I would like to make this passing comment: There is some thought that by reason of the establishment of a separate corps you remove your legal officers from the possibility of influence. Well, I fail to see how that is going to be the case.

I am speaking now with respect to the Navy. I cannot see where anything is to be gained in the Navy by doing this, because in the Navy, the Judge Advocate General does not report to the Chief of Naval Operations. He reports to me.

I prepare the fitness report for the Judge Advocate General and the Judge Advocate General prepares the fitness reports of the officers under him. Oddly enough, in the Army, which has a separate corps, I believe you will find the Judge Advocate General is under the Chief of Staff.

So I think even without a separate corps we have removed our legal officers from military command to a greater extent.

Mr. RIVERS. Of course, Mr. Kenney, as you and I well know, the Navy is altogether different because the Army has what is known as the horizontal and the Navy a vertical set-up. I prefer the vertical because, as you observe, it gives the officers a direct contact with the civilian authority, whereas the Army has always had to go through the staff set-up. Isn't that true, sir?

Secretary KENNEY. That is correct. That is the fundamental difference between the two organizations and that is why I feel that the Navy would gain nothing by the establishment of a separate corps.

Mr. RIVERS. Yes. That might be very, very true.

Mr. BROOKS. Mr. Secretary, I think you have made a very forceful statement, and I have followed you with much interest.

Mr. GAVIN. It is a forceful statement to continue as we are now doing, is that right?

Secretary KENNEY. I don't think that is true, Mr. Gavin.

Mr. GAVIN. The whole argument here is this command control. I think the Secretary has indicated that the present set-up is more desirable than any attempt to remove command control from the services.

Mr. BROOKS. No. I simply indicated it was a very forceful statement. I think it is. I further want to say this: The House is going to be in session in a few minutes, and I promised the chairman of the full committee that I would be over there this morning to present the proceedings before the committee yesterday.

So if the Secretary will excuse me, I will ask Mr. Rivers to preside there and the committee can go ahead as long as they desire. If you will take over, Mr. Rivers, I will discharge my mission, too.

Secretary KENNEY. I am available, as the members of this committee know, and can come here for questioning at any time if there are any further questions you want to ask of me, Mr. Chairman.

Mr. RIVERS (presiding). Mr. Elston.

Mr. ELSTON. Mr. Kenney, I readily see what might be involved if you had the separate panel. But actually if a commanding officer wanted to exert influence he could do it in the appointment of the members of the panel just about as much as he could in the appointment of the members of the court.

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Mr. RIVERS. Surely.

Secretary KENNEY. I think that would necessarily follow. I mean, you can't prevent improper action by merely writing things in a bill.

Mr. ELSTON. After all, he has his command problems which nobody knows more about than he does, and the question of availability of officers at certain times is to me one of the most impressive arguments against the setting up of a panel. You may have a panel all of the members of which are available at one time and none of them available at some other time because of some change of plans.

So I don't exactly see how it would work out very well. And after all, we are interested in removing command influence, but in my own mind, and without going into it any further, it just doesn't seem to me that we can accomplish it by setting up a panel.

Secretary KENNEY. Well, Mr. Elston, I think there has been a tendency on some people's part to sort of assume that command influence and improper influence are one and the same thing. The commander of his force has the interests of it most at heart and he has the problem of discipline. He is the person that is more interested than anybody else to see to it that his men are properly tried.

That is what I would say might be construed as command influence. He knows the men who are best qualified to sit on a case. Now when we talk about—and I know there has been some evidence before this committee—improper influence being exercised by commanding officers, we have tried to prevent that to the fullest possible extent.

No one condones that type of improper influence.

Mr. ELSTON. I don't see how you can go much further than we have gone by making it an offense for an officer to exert improper influence. His record means a lot to him and the mere writing of that into the law is going to have a tremendous influence so far as he is concerned.

Secretary KENNEY. Well, you want to realize, too, Mr. Elston, that this law is written for military people, and military people, I think, understand and comply with laws a lot more than we civilians do. I mean when an order is written, whether it is given by the commanding officer or whether it is given by Congress, that is it.

Mr. ELSTON. Civilians have a lot of regulations governing them these days, but they are not quite in the same position as a man in uniform.

Secretary KENNEY. I think all civilians could learn a little bit of respect of law from military personnel.

Mr. ELSTON. Well, I think they respect the law just as much, but they don't have command over them like a man in uniform does.

Mr. GAVIN. There seems to be a general opinion that there is a scarcity of officers available for these various court trials, that is courts martial. Why couldn't the Judge Advocate General educate more officers in this corps so that they are available and train them for this particular type of specialized legal work?

Secretary KENNEY. Well, I would like you to ask that same question of Admiral Russell when he is here because I have had a number of discussions with him on that and both of us have for some time been working on a program in an attempt to put into the naval service trained lawyers. Now it isn't something that you can do overnight.

It is a gradual process. In fact, within the past month I had a long discussion with Admiral Russell and members of his staff on

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taking further steps to increase what we call in the Navy our law specialists.

Mr. GAVIN. Well, we did have some schools of that nature during the war, didn't we, for the training of legal people?

Secretary KENNY. We still have. That is the school of naval justice which is at Port Hueneme in California.

Mr. ELSTON. Well during the war you didn't have any scarcity of lawyers in the service, did you? There were a lot of fine lawyers went in the service, and I am sure their services were utilized in courts-martial cases.

Secretary KENNEY. We had the finest lawyers in the country in the services during the war.

Mr. RIVERS. Mr. Secretary, weren't you general counsel for the Navy at one time?

Secretary KENNEY. I was, Mr. Chairman.

Mr. RIVERS. Wasn't the reason for the creation of that position the fact that there was a scarcity of lawyers of the type which could command, for instance, your type of ability?

Secretary KENNEY. Well, that office was established, Mr. Rivers, to take care of the great mass of procurement and industrial problems that came up during the war. The office of general counsel has never had anything to do with court-martial proceedings, and I don't think that they should because that is primarily a civilian office.

I think the administration of military justice is a problem which the military personnel understand to a far greater extent than I do as a civilian lawyer.

Mr. RIVERS. It doesn't follow that he couldn't do the same job that you did as a civilian. Isn't there a program now to train them where they can do the same work that you were brought in to do? Why shouldn't he be able to do that?

Secretary KENNEY. Well, there is no reason why they shouldn't be——

Mr. RIVERS. I mean why shouldn't the judge advocate be able to do the same job that you were called in to do during the war? Isn't that the idea now of the Navy, to train him to do just such work as you were called in to do?

Secretary KENNEY. Well, those men that we brought in the office of general counsel during the war, Mr. Rivers, were men that were taken from the commercial law firms throughout the country to handle commercial matters.

Mr. RIVERS. Well, now, with the training that you have had and the contact they have had with your type of training and ability, aren't they going to in the future be able to handle a great deal of that work?

Secretary KENNEY. It is not contemplated. We contemplate using our civilian lawyers for doing that type of work because it is predominantly a civilian type of operation. Military personnel will be transferred for military duties elsewhere. Then they lose contact with and get out of that type of operation.

Mr. RIVERS. I am well aware of the outstanding job you did, because we couldn't have done without it at all.

Secretary KENNEY. Well, it is very kind of you to say that, Mr. Rivers.

Mr. RIVERS. I remember vividly.

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Mr. SMART. I think one point there, Mr. Chairman, is that you can't have a person doing the type of work that is done in the general counsel's office where you have to know from day to day the latest decision of the Supreme Court and the Federal circuit courts of appeal and other jurisdictions if every 3 years you are going to take a man out of JAG work and rotate him to sea duty.

When he goes to sea duty for 2 or 3 years he loses complete touch. Certainly he couldn't maintain the contacts and the information to make him effective in the office of general counsel.

Secretary KENNY. Whereas that duty is extremely helpful and beneficial to your men in the JAG's office in handling courts-martial cases.

Mr. RIVERS. I can appreciate that, surely.

Secretary KENNEY. It is one of the reasons why I am not in favor of the separate corps for the Navy. The first reason, which I gave, is because I don't think it is necessary, and the other is that officers out in the field and fleet commanders have discovered that lawyers are useful on staff work. We are assigning a lot of them out for that.

Well, those men then serve in that capacity and then come back to the Judge Advocate General's office with a greater breadth of experience and they are more valuable officers to Admiral Russell. And I believe he will testify to that effect when he is here.

In other words, by not having it a separate corps we are able to broaden the type of experience that they get.

Mr. GAVIN. Yes; but if with unification of the services you had one corps, couldn't he supervise all three branches of the services?

Secretary KENNEY. I would not be in favor of one corps for all three services because again you are putting a supportive function out of its proper perspective. I mean, I would hate to think that unification meant the establishment of a lot of little autonomous empires.

Mr. GAVIN. Well, that may be. But within that corps the three branches of the services would be broken down, but it would be under one supervision. In other words, you would have one Department instead of three to refer all matters pertaining to all the branches of the service.

Secretary KENNEY. Of course, in this particular bill you have the judicial council which is to perform that function of bringing them together. I think you get better and more effective administration by the JAGS being a part of the service which they serve, rather than by making them something separate and apart.

Mr. RIVERS. You wouldn't like to make a statement of the advantages which could accrue by the same contact of the JAG of the Army with the Under Secretary of the Navy for the fitness reports? That is not a fair question to ask you——

Secretary KENNEY. Well——

Mr. RIVERS. Because you as Under Secretary have to O. K. the fitness report of the Judge Advocate General of the Navy.

Secretary KENNEY. That is right.

Mr. RIVERS. And that is because of your inherent vertical set-up.

Secretary KENNEY. That is the same way with respect to all Bureau Chiefs in the Navy.

Mr. RIVERS. That is right.

Secretary KENNEY. They report to the Secretary of the Navy and not to the Chief of Naval Operations. The Army has adopted the

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system of organization which is known as the general staff type of organization.

Mr. RIVERS. Yes.

Secretary KENNEY. I prefer our own. I presume the Army prefers theirs.

Mr. ELSTON. I take it you figure the Navy has a much different problem than the Army has in the administration of a separate Judge Advocate General's Corps. In other words, you are not undertaking to say that the Army shouldn't have one. You are simply saying that the type of separate corps set up for the Army would not work well in the Navy.

Secretary KENNEY. That is correct, Mr. Elston. I am not making any comment about the Army system.

Mr. RIVERS. And your testimony is not to imply or as proving like or dislike for the present set-up of the Army.

Secretary KENNEY. That is correct, Mr. Rivers.

Mr. RIVERS. You have no comment on that.

Secretary KENNEY. I have no comment on that, sir.

Mr. RIVERS. Thank you. Any questions?

Mr. DEGRAFFENRIED I believe not.

Mr. RIVERS. Any questions?

Mr. ELSTON. I assume we are going to later on decide whether we are going into that question, and then of course we would want all the reasons. I am sure Mr. Kenney would want to elaborate on those reasons a lot more than he has this morning because you only touched on it. You haven't given all of your reasons why you can't have a separate Judge Advocate General's Corps or why it might be advantageous to the Army and not be advantageous to the Navy.

Secretary KENNEY. I have asked Admiral Russell to furnish the committee with those reasons. I merely wanted to just touch on them lightly to let the committee know what my own thoughts were on the subject.

There is no difference of opinion, I might state, between Admiral Russell and myself on that. We are both in accord on that. We are both in accord. And that is—this is off the record.

(Statement off the record.)

Mr. RIVERS. Mr. Secretary, we appreciate your coming up. The chairman has already expressed his appreciation for your statement. I, too, want to thank you very much.

Now, what is the pleasure of the committee?

Mr. ANDERSON. Recess to 10 o'clock, Mr. Chairman.

Mr. RIVERS. Whatever the committee wants. I imagine it will be 10 o'clock tomorrow morning.

Mr. SMART. Ten o'clock tomorrow morning, Mr. Chairman.

Mr. RIVERS. All right.

(Whereupon, at 11:15 a. m., the subcommittee adjourned to reconvene on Thursday, March 31, 1949, at 10 o'clock.)

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UNIFORM CODE OF MILITARY JUSTICE

THURSDAY, MARCH 31, 1949

HOUSE OF REPRESENTATIVES,
COMMITTFE ON ARMED SERVICES,
SUBCOMMITTEE No. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will please come to order.

We were on article 22 yesterday when we adjourned. We will commence on article 22 this morning. Now, Mr. Elston, you were here. I had to leave early in order to go over to the floor. I would like to get your opinion as to what you think of article 22.

Mr. ELSTON. Off the record.

(Discussion off the record.)

Mr. BROOKS. Suppose, then, Mr. Smart, we will proceed by reading article 22. Perhaps some of the others will be here before we have finished.

Mr. SMART (reading):

Art. 22. Who may convene general courts-martial.

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary of a Department;

(3) the commanding officer of a territorial department, an Army group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army;

(4) the Commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the continental limits of the United States;

(5) the commanding officer of an Air Command, an Air Force, an air division, or a separate wing of the Air Force;

(6) such other commanding officers as may be designated by the secretary of a department; or

(7) any other commanding officer in any of the armed forces when empowered by the President.

(b) When any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed desirable by him.

References: A. W. 8; A. G. N., article 38.

Commentary: This article is derived from A. W. 8. Provisions for Navy, Coast Guard, and Air Force convening authorities are added. Paragraphs (6) and (7) permit the President and the Secretaries of the Army, Navy, Air Force, and Treasury (for the Coast Guard in peacetime) to empower other commanding officers to convene general courts martial. See article 1 for definition of "department."

Subdivision (b) is derived from A. W. 8. The word "accuser" is used in place of "accuser or prosecutor," and "accuser" is defined in article 1 in order to clarify its meaning.

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Mr. BROOKS. Mr. Larkin, where we say in subsection 3 "a separate brigade or a corresponding unit of the Army," what is meant by that phraseology? We have just referred to an Army Group, an Army, an Army Corps, a division, and a separate brigade, and then we say "or a corresponding unit of the Army."

Mr. LARKIN. I think that is provided, Mr. Chairman, to allow for flexibility. In the event that the organization of the Army or its units is changed at any time we would then have the statutory authority for that type of corresponding unit. I don't think there is any specific unit in mind at this minute, but in the event, for instance, that the organization of a whole Army and its divisions and other subdivisions are rearranged, the authority would be provided.

Is that your idea, Colonel?

Colonel DINSMORE. Mr. Chairman.

Mr. BROOKS. Yes, colonel.

Colonel DINSMORE. We have already changed. We have task forces and combat teams and all sorts of things which are comparable to a separate brigade.

Mr. BROOKS. And it was preferable to use these old terms rather than new ones?

Colonel DINSMORE. Yes, sir. They have been understood and construed. Furthermore, we can't anticipate now, as Mr. Larkin points out very pertinently, what may transpire in the future.

Mr. BROOKS. Mr. Elston, do you have any questions?

Mr. ELSTON. No; I do not.

Mr. BROOKS. Mr. deGraffenried, we just read article 22. Have you any questions you wanted to ask on article 22?

Mr. DEGRAFFENRIED. No, Mr. Chairman.

Mr. BROOKS. Mr. Rivers, do you have any questions on article 22?

Mr. RIVERS. No, sir.

Mr. BROOKS. Then, what is the pleasure of the committee? Are you satisfied with article 22 as it is?

Mr. RIVERS. That is the one we had yesterday, isn't it?

Mr. BROOKS. That is the one we discussed; yes, in length.

Mr. DEGRAFFENRIED. I believe since listening to the explanation of Professor Morgan, with the provisions that are in there, that we have about as much restrictions there on command domination or influence or control as we could have, unless we just change the complete set-up and have a panel.

Mr. RIVERS. Mr. Chairman, I would like to ask—excuse me.

Mr. DEGRAFFENRIED. That is all right.

Mr. RIVERS. No; I want you to finish.

Mr. DEGRAFFENRIED. I believe we are just about in as good condition as we could be without studying the system of a panel more fully than we have at the present time. I don't believe we are ready right now to make a change without more study. That is just my idea.

Mr. BROOKS. Mr. Rivers.

Mr. RIVERS. Did I understand the Chair to rule that the consideration of a separate set-up away from the so-called chain of command is not within the purview of this committee?

Mr. BROOKS. That is correct. My understanding is that the committee has no authority to consider any legislation but what is assigned to the committee. No such bill has been assigned to this committee. That is my interpretation.

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Mr. ELSTON. Well, Mr. Chairman, does that mean that we are not permitted to offer any amendments to this bill?

Mr. BROOKS. Oh, no.

Mr. ELSTON. Well——

Mr. BROOKS. On the contrary, the committee can do what they want. Of course if the committee goes ahead and exceeds its authority, if the full committee approves it, why then it is approved.

Mr. ELSTON. Well, the setting up of a separate JAG Corps last year was included in the military justice bill. We had jurisdiction then to do it. The bill passed the House and it passed the Senate. There was never any question raised about the authority of the committee to pass on that question. It all pertains to the administration of military justice. I certainly feel that the matter should be considered further by this committee.

Mr. BROOKS. There is no objection to considering it further, but of course that was my thought on it.

Mr. ANDERSON. In other words, there is no objection to considering it as a committee and if the members offer it and adopt it, why it becomes a part of the act; isn't that right?

Mr. ELSTON. I just want to be certain——

Mr. BROOKS. Yes. And frankly I want to be on the record as feeling that we shouldn't attempt to exceed our authority. I feel that we do transgress our authority to try to tie that on the bill.

However, every other member of the committee has his own responsibility. I don't see how we can reach any other interpretation, other than that that is a separate bill. You might as well tie to this bill anything else that you want which is not included within the terms of the Uniform Code of Military Justice.

Mr. RIVERS. May I ask the Air Force? Who is here speaking for the Air Force? Major, are you speaking for them?

Major ALYEA. I have been following this bill, Mr. Rivers.

Mr. RIVERS. I would like to know what your interpretation of the present law relating to your authority to set up a Judge Advocate set-up in the Air Force is.

Major ALYEA. I am not authorized to present the Air Force position on that subject.

Mr. RIVERS. You know what you have set up, don't you?

Major ALYEA. Yes, sir. I have a personal opinion.

Mr. RIVERS. Well let me ask Mr. Larkin and then maybe you can interpolate.

Mr. LARKIN. The Air Force's legal interpretation of title 2 of the Public Law 759 passed last year, which includes at the end four sections which amend the National Defense Act——

Mr. RIVERS. That is right.

Major ALYEA. By setting up a Judge Advocate General's Corps, is that those four sections do not apply to the Air Force but to the Army only.

Mr. RIVERS. What are those four exceptions?

Major ALYEA. Four sections.

Mr. RIVERS. Well, they are four exceptions, too. What are they?

Mr. BROOKS. Let Mr. Smart answer that. I believe he can answer that.

Mr. SMART. Let me state this——

Mr. RIVERS. What is the general law on it? It says it shall apply to the Air Force or something to that effect.

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Mr. SMART. Well, you have a situation involving statutory construction, Mr. Rivers. Immediately after or almost simultaneously with the House passage of H. R. 2575, which really pertained to the Army—it started out an Army bill, but at that time the Air Force military justice was administered by the Army——

Mr. RIVERS. That is right.

Mr. SMART. Then a bill, S. 2401, was presented to and approved by the committee, establishing the office of Air Judge Advocate and there were words used in that act which said laws now in effect relating to the administration of military justice would be equally applicable to the Air Force.

Now the question came up in connection with the Judge Advocate Corps that the Congress set up for the Army: Did Congress establish a corps of 750 officers for the Air Force? I can say to you on good information that the question has been submitted to the Attorney General.

It has been submitted to various and sundry people. There is a great diversity of opinion in official circles in Washington whether or not the Air Force has a corps. I know that they interpret it in the Air Force to mean that they do not have a Judge Advocate Corps.

And as a matter of fact a bill on this subject has been introduced and is now awaiting action by this committee—H. R. 1438, to construe title 2 of Public Law 759, Eightieth Congress to make it applicable to the Air Force, except the last four sections which established a Judge Advocate Corps for the Army.

Now that is the situation as of this moment.

Mr. RIVERS. I understand—and I say this is purely through conversation—that the type of corps that the Air Force wants to set up is a corps which is not separate like the Army but every section as applies to the Army that they like they are going to use and the sections they don't like they don't want to use.

That is, they are putting it under the chain of command. And I just want to know if that gossip is true or is it not true? I would just like to know it because it certainly is not good publicity. I thought the Air Force was supposed to have a JAG set-up like the Army.

Mr. SMART. Well, if they do have, Mr. Rivers, it would come purely as a matter of statutory construction and not as a specific enactment of law. That is my personal opinion.

Mr. RIVERS. Was this bill that was introduced—I guess the Chairman introduced it?

Mr. SMART. He did, at the suggestion of the Secretary of the Air Force.

Mr. BROOKS. Let me ask you this: That bill has not been assigned to this subcommittee?

Mr. SMART. It has not been assigned to any subcommittee.

Mr. RIVERS. Does it bring into effect a separate JAG?

Mr. SMART. It does not. The sole purpose of H. R. 1438 is to clarify beyond any doubt the question as to whether or not the Articles of War, as amended, exclusive of a corps, are equally applicable to the Air Force.

Mr. RIVERS. What does it do? Does it say it is or it isn't?

Mr. SMART. It provides that the revised Articles of War are applicable but that a Judge Advocate Corps is not applicable to the Air Force.

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Mr. LARKIN. That is right.
Mr. RIVERS. What?
Mr. SMART. The separate corps is not applicable.
Mr. ELSTON. Everything except the corps.
Mr. BROOKS. Yes.
Mr. RIVERS. That is primarily what I understood.
Mr. SMART. But may I make a further comment, Mr. Chairman, for just a moment, with your indulgence here? I said before and I would like to reiterate now I feel that article 22 will stand upon its own feet completely apart from this corps proposition.

I have no intention or idea to influence this committee as to whatever action it might take regarding a corps. I merely want to point out that it seems to me that the attitude of the committee is to go ahead and approve article 22 as to who will appoint courts and leave it in command.

Now, if the committee sometime later, before you conclude your deliberations, decide you want a corps, that is all right. That can stand on its own feet.

Mr. BROOKS. Well——
Mr. SMART. But this can proceed as it is.
Mr. RIVERS. That is right.
Mr. SMART. With or without a corps.
Mr. ELSTON. I agree with Mr. Smart.
Mr. RIVERS. So do I.
Mr. DEGRAFFENRIED. Yes.
Mr. BROOKS. Let us postpone a further discussion of the corps, if it is all right with the committee, and dispose of this article and the succeeding ones. Then we can come back to the corps. And there may be disposition of the other bill by that time by the chairman.

But again I call your attention to the fact that, when the bill is not assigned to the committee, the committee is going to run into grave difficulties should that bill, which has already been put in, be assigned to another subcommittee and we undertook to present it to the full committee as a part of our bill.

Mr. ELSTON. Well, Mr. Chairman, I only make this point. When you sit down to write a uniform code of military justice, any amendment which is germane to that subject the committee should consider. The fact that it is submitted to us in another bill would seem to me to be immaterial.

We either have the right or we don't have the right to amend this bill. If we have the right to amend it, then we should consider any amendment that anyone wants to offer which is germane to the subject. And I certainly propose to offer an amendment to at least the Air Force. The Navy has stated their position, and I think they stated it very well. They have given us some cogent reasons why a separate corps would not work so well in the Navy.

We haven't gone into it completely, because we still want to hear from Admiral Russell. And we certainly want to hear from the Air Force. We ought to know what their views are before we close the door on this.

Mr. BROOKS. We will do this——
Mr. ELSTON. I just wanted to be sure that we are not closing the door now by passing on these sections.

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Mr. BROOKS. Well, we have the interpretation of Mr. Smart. I think we can rely on that safely.

We will take that up at a later date. And let the committee as a whole decide what they want in reference to that. As long as the bills are not assigned to this subcommittee, I certainly am not going to take any other position than that; that we are exceeding our authority when we undertake something that isn't assigned to the committee.

If the committee wants to do that in spite of the situation, then it is the committee's responsibility.

Mr. RIVERS. I think it would be helpful if we were to get the spokesmen for the Air Force. Now the Navy sent their Under Secretary up here, Mr. Kenney. Why couldn't the Air Force at some time in the future not too far distant give us the privilege of hearing the feeling of the Air Force on this matter?

Mr. LARKIN. That is contemplated, Mr. Rivers.

Mr. RIVERS. I see.

Mr. LARKIN. As Mr. Elston and Mr. Smart have pointed out, you can consider 22 without reference to the corps in connection with the panel.

Mr. RIVERS. I appreciate that.

Mr. LARKIN. And since you indicate or the committee indicates that it would like to consider the corps after solving its own jurisdictional problem, it is contemplated that there would be further testimony on just that point from Admiral Russell to supplement Mr. Kenney's.

Mr. RIVERS. That is right.

Mr. LARKIN. And from Assistant Secretary Zuckert of the Air Force on behalf of the Air Force. There, again, I would recommend, as you did yesterday when you took time out to specifically consider the panel idea, that you again, when we finish the reading of the whole bill, take time out and have a special session.

Mr. RIVERS. That is right.

Mr. LARKIN. On the corps, with Admiral Russell finishing for the Navy and Mr. Zuckert coming forward for the Air Force.

Mr. BROOKS. There are no amendments offered to article 22 and apparently no objection. If there is no objection to article 22, it will stand adopted as read——

Mr. SMART. I have one suggestion. I don't know whether it is an omission or not.

Mr. BROOKS. What is that?

Mr. SMART. I would like to call it to Mr. Larkin's attention. We seem to have omitted the authority here to the Commandant of the Coast Guard. Don't you think that it should be inserted?

Mr. RIVERS. In section (2)?

Mr. LARKIN. I don't think it is necessary, Mr. Smart, for this reason: In subdivision (6), "Such other commanding officers as may be designated by the Secretary of a Department," by virtue of the definition in article 1 the Secretary of the Treasury is such a Secretary in peacetime.

Mr. RIVERS. Well, the Secretary of the Department up there, too, in article 22.

Mr. LARKIN. Well, the Secretary of the Department in (2) is the person of the Secretary. He may himself convene a court.

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Mr. RIVERS. Oh, I see.

Mr. LARKIN. And then in (6) he may designate such further officers. Actually, the same situation obtains for the Superintendent of West Point, and Annapolis. The individual Secretaries of the Department may designate them, if they desire. The Secretary of the Treasury is included by definition.

Mr. SMART. I merely wanted that covered in the record.

Mr. BROOKS. If there is no further objection, then, let us proceed with article 23.

Mr. SMART (reading):

ART. 23. Who may convene special courts-martial.

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary airfield, or other place where members of the Army or Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; or of any marine brigade, regiment or barracks;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary of a Department.

(b) When any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed advisable by him.

References: A. W. 9, A. G. N., article 26.

Commentary: This article is derived from A. W. 9. Provisions for all the armed forces have been added. An "officer in charge" is an officer of the naval service or Coast Guard who is not known by the title of "commanding officer" but exercises similar authority. Subdivision (b) conforms to article 22.

Mr. BROOKS. You have heard the article. Are there any questions on it? Any changes suggested? If not——

Mr. SMART. It is a restatement of existing law, Mr. Chairman.

Mr. BROOKS. Yes.

Mr. RIVERS. Do you want anything for the record?

Mr. SMART. That is all that needs to be, sir.

Mr. BROOKS. Yes. It is just the same law restated there.

Mr. LARKIN. Yes, sir.

Mr. BROOKS. If there are no objections, then, it stands adopted as read.

Article 24.

Mr. SMART (reading):

ART. 24. Who may convene summary courts-martial.

(a) Summary court-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other department of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary of a Department.

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(b) When but one officer is present with a command or detachment, he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when deemed desirable by him.

References: A. W. 10; A. G. N. article 64; proposed A. G. N., article 15.

Commentary: This article is derived from A. W. 10. Provisions for all the armed forces have been added. It is felt appropriate that all persons empowered to convene superior courts-martial should also have power to convene inferior courts-martial.

Mr. BROOKS. Is that a restatement of the present law?

Mr. SMART. That is right, sir.

Mr. LARKIN. Yes, it is.

Mr. BROOKS. Any questions on it?

Mr. RIVERS. May I ask this question. We had the question brought up a few days ago by Commander Webb, I think, about these Coast Guard stations. Don't let us overlook the authority which we have to give those people.

Mr. SMART. I think, Mr. Rivers, that the interpretation which the committee has already placed upon that, recognizing the difference between the interpretation of an officer in charge in the Navy and an officer in charge of the Coast Guard, will adequately cover this situation.

Mr. RIVERS. Whether or not he is a commissioned officer.

Mr. SMART. Exactly.

Mr. LARKIN. That is right.

Mr. RIVERS. I just wanted to show that, because everybody is familiar with these Coast Guard stations up and down the coast, and they have to have adequate provision for discipline.

Mr. LARKIN. That is right.

Mr. BROOKS. Yes. Any further discussion on it? I think it speaks for itself pretty well. If not, article 24 will be adopted as read.

Article 25.

Mr. SMART (reading):

"ART. 25. Who may serve on courts-martial.

(a) Any officer on active duty with the armed forces shall be competent to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty with the armed forces shall be competent to serve on general and special courts-martial for the trial of any person, other than an officer, who may lawfully be brought before such courts for trial.

(c) Any enlisted person on active duty with the armed forces who is not a member of the same unit as the accused shall be competent to serve on general and special courts-martial for the trial of any enlisted person who may lawfully be brought before such courts for trail, but he shall be appointed as a member of a court only if, prior to the convening of such court, the accused has requested in writing that enlisted persons serve on it. After such a request, no enlisted person shall be tried by a general or special court-martial the membership of which does not include enlisted persons in a number comprising at least one-third of the total membership of the court, unless competent enlisted persons cannot be obtained on account of physical conditions or military exigencies. Where such persons cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

For the purposes of this article, the word "unit" shall mean any regularly organized body as defined by the Secretary of the Department, but in no case shall it be a body larger than a company, a squadron, or a ship's crew, or than a body corresponding to one of them.

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(d) (1) When it can be avoided, no person in the armed forces shall be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall appoint as members thereof such persons as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No person shall be eligible to sit as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case."

References: A. W. 4, 16; A. G. N., article 39; proposed A. G. N., article 24 (a).

Commentary: Subdivisions (a), (b), and (c) make officers, warrant officers, and enlisted persons competent to sit on the courts martial of any armed force, without regard to whether they are members of the same armed force as the convening authority, or of the same armed force as the accused. Placing no limitation on competency in this respect will give the convening authority a maximum number of persons to draw on for membership of a court martial in a situation where he is in command over several small units of different armed forces, or will permit the appointment to a court of persons belonging to the same armed force as the accused in a case in which reciprocal jurisdiction is being exercised. In such cases it is contemplated that the President's regulations on reciprocal jurisdiction will specify what percentage of members will be from the same armed force as the accused. (See article 17.) As a practical matter, the appointment of mixed courts will not be a common practice.

Subdivision (c) limits the competency of enlisted persons to cases where they are not members of the same unit as the accused. By section 212 of Public Law 759, Eightieth Congress, second session (1948) (see A. W. 16) Congress similarly limited competency to enlisted persons not assigned to the same company or corresponding military unit. A corresponding military unit aboard a ship is felt to be the ship's crew, which, though it may in some cases be a larger group than the Army company, is the same kind of integrated body, living and working in close association.

The last sentence of the first paragraph of subdivision (c) was added to make it possible to proceed with a trial where competent enlisted persons cannot be obtained. This is to avoid long delays in the administration of justice and the expensive process, which might otherwise be necessary, of transporting witnesses or court members great distances. Such delays and expenses would arise in connection with offenses committed on ships at sea or in isolated units ashore, such as remote weather stations. The language of the subdivision makes it clear that mere inconvenience is no ground for proceeding with a trial without enlisted persons on the court, and the requirement of a detailed written statement of the ground insures that the purpose of the subdivision will be complied with.

Mr. BROOKS. You have heard the article. Do you have some questions, Mr. Rivers?

Mr. RIVERS. May I ask you this for the record. Do you consider this strong enough to assure the minimum of criticism of the enlisted man serving on the juries when an enlisted man is tried? There is a detailed report there.

Mr. SMART. It is my opinion, Mr. Rivers, that this answers the complaint of enlisted people. I have some statistics which I would like to submit for the record on the ideas of enlisted persons, as to whether or not this is a good section.

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Mr. RIVERS. Yes.

Mr. SMART. At the time we included the enlisted-man provision for Army courts martial we really didn't know how enlisted men felt about it. Ranking officers then and since that time have stated to me that they doubt that it will be of any assistance or benefit to enlisted persons.

Mr. RIVERS. Well, it can't hurt.

Mr. SMART. I don't agree necessarily. It may hurt them because some of these "crusty" noncoms might throw the book at these boys where officers would probably be a little more lenient.

Mr. RIVERS. That is right.

Mr. SMART. But I would like to point out, and I have found this to be true beyond any doubt through interviewing 930 enlisted men during last October: I find that, excluding the 60 to 80 young men who were recruits or OCS candidates from the total, about 93 percent of the men expressed the desire to have the option to have enlisted men on their courts if they want them.

Mr. RIVERS. Well, that is all right.

Mr. SMART. And I asked three different questions. First, how many of you would like to be tried by an all-officer court? Second, how many of you would like to have the option to have at least one-third enlisted men on your court? Third, how many of you would like to be tried by an all-enlisted-man court? Out of 930, only 1 soldier stated that he would like to be tried by an all-enlisted-man court.

Ninety-three percent want the option to be tried by a court partially composed of enlisted men, as is provided in this article.

Mr. RIVERS. One other thing. Can we say that this whole provision here gives a man an opportunity to be tried by a jury of his peers?

Mr. SMART. A jury composed of at least one-third of his peers, I would say.

Mr. DURHAM. Mr. Chairman?

Mr. BROOKS. Mr. Durham. We are happy to have you here this morning. Mr. Durham is the chairman of subcommittee No. 3.

Mr. DURHAM. Thank you very much.

This provision is practically the same as was placed in the act last year, with the exception of the inclusion of the Navy?

Mr. SMART. It is substantially the same.

Mr. DURHAM. Now the term "ship's crew"; would that eliminate a lot of men from serving on courts martial to a large extent?

Mr. SMART. In my opinion, it would, sir. On a small ship, and I don't care whether it has 25 men or 125 men, they are so closely confined by the very nature of the operation, that you must consider them a unit. I think you could not get away from prejudice among enlisted persons in that situation. I think it is intended that enlisted men would not be provided under those circumstances.

Mr. DURHAM. In the Navy.

Mr. SMART. Yes, sir.

Mr. BROOKS. Well, let me ask you this, Mr. Smart. By having this provision regarding enlisted men in here, at least you remove the criticism that has been leveled at these trials which prohibited the use of enlisted men?

Mr. SMART. That is correct, sir.

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Mr. BROOKS. To that extent it will have a good moral effect, don't you think?

Mr. SMART. I think so. An experiment, I might point out to the committee, has been tried since you have been conducting these hearings. That was at Scott Field, Ill., where an 11-person court was convened. Four of them were officers. The trial judge advocate challenged one of the officers for cause and another one peremptorily. The defense counsel did the same thing. So all they had left was seven enlisted persons. Those seven enlisted men served as the trial court of the accused. I think they gave him a $50 forfeiture for 2 months and perhaps about 60 days of confinement.

That is completely in line with sentences which have been given for the same offense by officer courts.

Mr. RIVERS. That is right.

Mr. SMART. So this provision doesn't seem to be detrimental to enlisted men.

Mr. DEGRAFFENRIED. May I ask a question, Mr. Chairman?

Mr. BROOKS. Mr. deGraffenried.

Mr. DEGRAFFENRIED. Mr. Smart, just for my information, is there any provision in this act or in existing law where the court is sitting both as a jury and a court for asking to see if the members are really qualified to ask them questions such as these, whether each of them believes in capital punishment or whether they would convict on circumstantial evidence or whether they heard so much about the case and are so familiar with the facts that they couldn't give the defendant a fair trial?

Mr. SMART. No.

Mr. DEGRAFFENRIED. There is nothing provided like that, is there?

Mr. SMART. No, because trial by jury is a civilian protection, a constitutional right that does not follow a man into the service.

Mr. RIVERS. Wouldn't the law officer rule on whether or not questions of the court would be admissible?

Mr. SMART. The only way that can be reached, Mr. Rivers, is to challenge a member of the court for cause. After you have once exercised your one peremptory challenge, then the only remaining challenge you have is a challenge for cause which must rise or fall upon its own merits.

Mr. RIVERS. Well, that is the way you could reach Mr. deGraffenried's objection, there.

Mr. LARKIN. That is right.

Mr. RIVERS. On the separate merits of the individual's statements.

Mr. SMART. That would be the only way.

Mr. PHILBIN. Do you have any way provided by which the accused can object to the members of the court?

Mr. LARKIN. Yes. There are challenges for cause as to each member. And then you have a peremptory challenge where you can challenge one member, that is any one member, without reason at all.

Mr. RIVERS. Each defendant could challenge one man?

Mr. LARKIN. According to the modification we have made, yes, sir.

Mr. DEGRAFFENRIED. What I had in mind, though: There are oftentimes where the counsel doesn't have any information. The only way he has of getting the information is by asking the person himself as to whether he has heard so much about the case that he is prejudiced on one side or the other and couldn't go by the evidence

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in the case. You wouldn't have heard one thing about it one way or the other. That is what I had in mind.

There are certain people who don't believe in capital punishment under any circumstances. Well, he might not have expressed his opinion. You wouldn't know it. But the only way you could find it out would be by asking him.

Mr. LARKIN. That is right.

Mr. ELSTON. There is no limit to the number of challenges for cause?

Mr. LARKIN. No, sir.

Mr. ELSTON. And my understanding is that the rules are practically the same as they are in the civil courts. You may examine any member of the court and if the court is satisfied that any member of the court is prejudiced against the accused or he doesn't believe in capital punishment or there is any reason why he can't grant a fair and impartial trial, a challenge for cause will lie?

Mr. LARKIN. That is right, and be sustained, I should say, on the proof of any of those circumstances.

Mr. ELSTON. Yes.

Now, Mr. Chairman, Mr. Smart mentioned about his having talked to a number of enlisted men. I think the record ought to show the facts with regard to Mr. Smart's investigation into this subject and where he interviewed these men.

Mr. BROOKS. Would you like to elaborate a little bit on that, Mr. Smart?

Mr. ELSTON. It is quite illuminating.

Mr. BROOKS. I think it is very important.

Mr. ELSTON. Because Mr. Smart took a lot of time last summer and fall while we were not in session.

Mr. BROOKS. Mr. Smart, will you give us a little more detail about your investigation?

Mr. SMART. Well, I would merely like to say three things. These interviews included 140 colored troops out of the total of 930, so there is a fair representation of both colors in these totals.

I would further point out that the colored enlisted man expressed his preference for this option for exactly the same reasons as the white soldier did. They have two particular reasons for wanting it.

One is that they feel that officers, in the main, have never served in the enlisted grades and do not understand the problems of enlisted people. While they don't expect any particular sympathy from the court because of that, a court which might include enlisted persons, nevertheless they feel that they would have more understanding.

The second reason is this: They say it is much more democratic. They just like the idea that they have a choice. They say "We would have it in civilian life and we like the idea that we can have it here."

Now as to the number of places I visited, they are seven in number. They represent only Army and Air Force installations. I tried but was unable to get the time to make a similar survey of naval installations.

Rather than impose on the time of the committee any more, Mr. Chairman, I would offer a tabulated result of my interview with the men. It is prepared for the record, if I may offer it for the record.

Mr. BROOKS. Tell me this: Do you have copies of that? Of course the committee can get those from the record when it is printed.

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Mr. SMART. I can furnish each of you with copies if you so desire,

Mr. BROOKS. If it isn't much work, that would be fine. I think ery member of the committee would like to study that while we are iberating on the bill.

Mr. RIVERS. It is very good information.

(The information referred to is as follows:)

Military justice interviews, enlisted men, Oct. 4–Oct. 24, 1948

Place	Designation of unit	Number in unit	Prefer all officer court	Prefer court with at least one-third enlisted men	Prefer all enlisted men court with 1 legal officer
kland Air Force Base	Headquarters, noncommissioned officers.	34	4	30	0
C-Induction Center	OCS class	20	14	6	0
Antonio, Tex	Trainee flight	60	25	35	0
adquarters, 4th Army, Fort am Houston, San Antonio, ex.	Headquarters Detachment, Medical Field Service School.	51	4	47	0
	25th TC Co. (colored troops)	20	1	19	0
	Specialist noncommissioned officers: Cooks, bakers, etc.	50	1	49	0
	Miscellaneous group of noncommissioned officers.	40	4	36	0
lly Air Force base, Air Matériel Command, San Antonio, Tex.	3050 Air Support Command Headquarters.	18	0	18	0
	(Colored troops) Headquarters Squadron.	22	0	22	0
	Miscellaneous group, headquarters personnel.	25	0	25	0
opeka Air Force Base, Topeka, Kans.	55th Strategic Reconnaissance Wing.	50	0	50	0
	311th Air Division Headquarters.	50	0	50	0
ott Air Force Base, Belville, ll.	3310th Base Service Squadron (colored).	50	0	50	0
	Student typing class	111	23	88	0
	Headquarters and Headquarters Squadron.	34	4	30	0
ort Knox, Ky., 3d Armored Division, Armored Center.	School troops	38	4	34	0
	2128th Headquarters Co	40	4	36	0
	3-1 Armored Group (colored)	43	0	42	1
	Miscellaneous group of enlisted men (mixed).	40	1	39	0
Wright-Patterson Air Force Base, Dayton, Ohio.	Headquarters and Headquarters Squadron, 2750th Air Force Base.	33	6	27	0
	3060th Air Matériel Command Headquarters Support Squadron.	50	0	50	0
	Miscellaneous enlisted men [1]	51	4	40	0
Total		930	99	823	1

[1] 7 did not vote.

Mr. ELSTON. Now, Mr. Chairman, I have a question or two about the section.

Mr. BROOKS. Mr. Elston.

Mr. ELSTON. First of all, I would like to ask whether or not article 25, subsection (a), is the section that permits naval officers to sit as members of a court convened by an Army commander and vice versa?

Mr. LARKIN. That is right, Mr. Elston. It is purposely made broad to tie in with the other article which provides reciprocal jurisdiction. The exercise of the reciprocal jurisdiction of one service over another as you will recall will depend upon the rules set out by the President.

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But this does provide the statutory authority whereby officers of one service can sit on the courts of others.

Mr. RIVERS. That is like the MATS?

Mr. LARKIN. That is right.

Mr. ELSTON. Now what has been the position with respect to warrant officers heretofore?

Mr. LARKIN. Heretofore of course they have not been eligible or competent. They were made so by the Elston bill last time.

Mr. ELSTON. Yes.

Mr. LARKIN. And this is a continuation of the provision provided in Public Law 759.

Mr. ELSTON. I think you have explained already the other question I had and that was a definition of the word "unit" in line 15, where you say "where a person is not a member of the same unit."

Mr. LARKIN. That is partially defined, I should say, in the second paragraph of subdivision (c). Your bill, if you will recall, last year provided for the Army only that no enlisted person in the same company or corresponding unit would be eligible to sit on the court of an accused from that unit. We have continued the same idea of a unit, but since we were dealing with the Navy as well, the nearest unit we could arrive at was a ship's crew.

The definition is not very complete, I concede, but it is difficult to find an exact comparison. Actually there is none. So we left it or we felt it best to leave it to the departmental secretaries to determine the units that they think appropriate for their own services, but we have restricted them by not permitting them to say that anything bigger than a ship's crew is a unit.

Now of course in some few instances that may be a large body of people, such as on a battleship, but we just couldn't find any other unit and at least they can't say that a unit is something bigger than a ship's crew, you see.

Mr. ELSTON. Now, it seems to me that perhaps the language in lines 19 and 20 might need a little clarification. The provision there is "but he shall be appointed as a member of the court only if prior to the convening of such court the accused has requested in writing that enlisted persons serve upon it." Now does that mean when the notice is given that the court is to be convened or does it mean prior to the actual convening of the court?

Mr. LARKIN. I think it extends all the way up to the time that the court sits or actually convenes as you put it. It is after, in other words, the time when he is first served with charges. He has time to decide whether he desires to request enlisted men on his court.

Of course it may cause some administrative problems in that we won't know up to the convening of the court whether he intends to ask for enlisted men and if he does and there are none available the trial may have to wait several other days until some enlisted men are available. I think some consideration ought to be given to that.

Mr. ELSTON. Well, it isn't entirely clear then as to just when the time ends for his requesting enlisted men on the court.

Mr. LARKIN. I should say a fair construction of this language is that it doesn't end until he is arraigned. In other words we may be faced with the fact that the court trial is all ready to start and while in most cases I would assume the accused and his counsel would make his request known before the day, a number of them may purposely not do so just to delay the start of the trial.

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Mr. DURHAM. The man might have to spend several days in the brig.

Mr. ELSTON. Yes. Of course they would know that, if he had to spend several days in the brig.

Mr. LARKIN. Oh, yes. Then I think he could not complain about that, certainly.

Mr. ELSTON. After all, it could be taken care of by always having some enlisted men available in the event the question is raised even at the last moment.

Mr. LARKIN. I suppose that is so, except it would be administratively easier if we could provide some fair time in advance of the actual sitting of the court but after the serving of charges. Otherwise you will have enlisted men sitting around not knowing whether they are going to be used or not or whether it is necessary to have them.

Mr. ELSTON. Well, do you think we should spell it out in this section or leave it for regulation?

Mr. LARKIN. Well, if the committee is content to construe the language as meaning some short reasonable time before arraignment, some time after the signing of charges, I think that is sufficient. It is difficult to spell out numbers of days because then it becomes very inflexible and the time that elapses between the referring of the charges and the start of the trial varies so greatly that any 1 day or any number of days is really difficult to determine.

Do you have anything you can add to that, Colonel? That is the point you had in mind, I think.

Colonel DINSMORE. Yes.

Mr. Chairman, the difficulty as pointed up by this situation is this: It is standard practice to appoint a general court martial and continue it in operation for a given period of time or for a given number of cases. That is administratively desirable.

Now, if you don't know beforehand whether the accused who is an enlisted man is going to ask for enlisted men on the court, you may have to appoint a new court for each case which although not an insuperable administrative difficulty leads to a good deal of inconvenience.

Mr. RIVERS. Why couldn't you circularize that amongst the enlisted men and find out what they are going to do?

Colonel DINSMORE. You could, Mr. Rivers, but as Mr. Larkin points out here this says he can make his election any time up to the time the court meets.

Mr. BROOKS. Why wouldn't this be the better way to approve that, Colonel: At the time he is advised of his rights—and we have specified that he shall be advised of certain rights as Constitutional rights—we also insert in that particular provision a requirement that he be advised of his rights to request enlisted men, provided he does that before the court is convened.

Colonel DINSMORE. That is in connection with investigation.

Mr. BROOKS. Yes.

Colonel DINSMORE. Yes, sir.

Mr. BROOKS. We could do that, so that he could be well posted and make his decision early.

Mr. ELSTON. Of course he might not have an opportunity to talk to his counsel until after that.

Mr. LARKIN. I think that is right. I think it should be after the formal referring rather than just in the preliminary step.

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Mr. SMART. Not only that, but the charges which are sent down for pretrial investigation may not result in trial at all, in which event he is selecting an enlisted man jury for a case that may not be tried.

Mr. BROOKS. Well, I don't refer to it specifically as necessary to be made at the pretrial investigation, but at some date when he is advised of his rights that particular right can be stipulated.

Colonel DINSMORE. Mr. Chairman, we are not by any means disposed to deprive the enlisted man of this right. I merely point out that there is an administrative difficulty there on account of the uncertainty of the present language.

Mr. LARKIN. We copied this language exactly from your provision, Mr. Elston. But there is that possibility. Perhaps Mr. Smart and I could work out language of this kind, that no enlisted person shall be tried without enlisted men when requested in writing by the accused within a reasonable time after the referring—which is a word of art meaning the formal referring for trial by the convening authority—of these charges and before the actual convening of the court. Perhaps something like that would work out.

Mr. ELSTON. Then you would have to interpret what was a reasonable time.

Mr. LARKIN. Well, that is right.

Mr. BROOKS. Does "reasonable" add anything to what you have, because, let us assume that no court is going to be unreasonable.

Mr. LARKIN. Well, under the present language the request can be made right up to the minute the court is scheduled to sit.

Mr. ELSTON. It seems to me that is the way it ought to be.

Mr. LARKIN. I should say that is the clear construction of this language. Now if the committee decides that is the way they want it to be, I wouldn't tinker with it.

Mr. ELSTON. Yes.

Mr. LARKIN. I think it is construed that way in the commentary and if not, I think this discussion would so indicate.

Mr. ELSTON. You can see where a man may not get counsel until the day before his arraignment or even on the day of his arraignment. He might change his mind. He may in the beginning think that he doesn't want enlisted men and then he may decide that he does want them. He may find out something about the personnel of the court that would make him change his mind, perhaps.

Mr. BROOKS. That is the point exactly. I don't think that an enlisted man ought to have two bites at the cherry, any more than anybody else should. If he doesn't like the court that is appointed to try him, he then shouldn't have the right to say, "Well, I want another court," any more than an officer should have that right.

Mr. ELSTON. I don't mean after the court is convened. I mean up to say the time of his arraignment.

Mr. LARKIN. Yes.

Mr. ELSTON. When he is asked to plead to the charges.

Mr. BROOKS. Mr. Smart, you have a suggestion?

Mr. SMART. I honestly believe, in view of the provisions for counsel which are provided in this bill, that an enlisted man is going to know that he has the right before he goes to trial to have enlisted persons on that court. As a practical situation I think it is going to be a rare thing where an accused is going to wait and try to gum up the works,

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so to speak, and delay trial by waiting until the time the court is convened and then request enlisted men.

I think that is going to be a rare case. And when it does happen, in that rare case, he is the person who is going to suffer because he is going to lay in the "clink" until they get to trial. I think he is harmed more than anyone else. I think, practically, it is not going to cause any trouble.

Mr. ELSTON. Well, I think in view of the interpretation of it already, if that follows through, you won't have any trouble with it.

Mr. LARKIN. I think so.

Mr. SMART. I had one more observation which I think this committee ought to interpret, when they provide that "the accused has requested in writing." Now it seems to me that the language there is pretty clear and means the accused. But I can tell you this case has arisen, which is now in the Judge Advocate General's Department of the Army: the attorney for the accused made the request for the enlisted men and insists that he made it at the request of the enlisted defendant.

Mr. ELSTON. Wouldn't it be all right to say "the accused or his counsel"?

Mr. SMART. I believe I would leave it "the accused" here. And I believe I would make the accused himself sign that application so he will never then be heard to say that he didn't want them.

Mr. DEGRAFFENRIED. Didn't authorize his counsel to do it.

Mr. SMART. That is right.

Mr. DURHAM. I don't see how you could put that interpretation on that—"accused has requested in writing that enlisted persons serve on it." This says "in writing."

Mr. SMART. That is true. Of course as a matter of form in your civil courts the attorney is authorized to do many things as the agent of his client. Perhaps that is the thought that is carried over here.

But I believe now that the committee should clearly express its intent that this means that the accused himself shall sign it and not delegate that authority to anyone else. But I would not want to prejudice the case which is already existing by the present interpretation of the committee.

Mr. BROOKS. Your idea is this, is it, that the right is so important in your mind that the accused should be required to sign the application to indicate that he is fully apprised of his right?

Mr. SMART. And that he personally makes that choice and does the signing personally and doesn't delegate it to anyone slse—counsel or otherwise.

Mr. ANDERSON. Mr. Chairman, I have a suggestion. Why not make it very clear by putting after the word "accused" "himself"?

Mr. DEGRAFFENRIED. "In person" or something of that kind.

Mr. LARKIN. "The accused has personally requested," I would think would make it nondelegable.

Mr. ANDERSON. Just anything that makes clear that that is the intent of the committee.

Mr. BROOKS. Do you make that as a motion?

Mr. ANDERSON. I make that as a motion.

Mr. BROOKS. An objection? If not, we will insert the word "personally."

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Mr. ANDERSON. I would like it noted that that is the first suggestion I have made that has been adopted.

Mr. BROOKS. Mr. deGraffenried.

Mr DEGRAFFENRIED. Mr. Larkin and Mr. Smart——

Mr. SMART. Yes, sir.

Mr. DEGRAFFENRIED. Over on page 23 of the bill, on line 19, it says:

No person shall be eligible to sit as a member of a general or special courts martial when he is the accuser or a witness for the prosecution or has acted as an investigating officer as counsel in the same case.

Would it be worth while in your opinion to add to that "or who has a fixed opinion as to the guilt or innocence of the accused", or can you reach that in some other way?

Mr. LARKIN. I think you reach that in your challenge for cause.

Mr. DEGRAFFENRIED. All right, sir.

Mr. LARKIN. I think that is clearly taken care of under that.

Mr. DEGRAFFENRIED. All right, thank you.

Mr. BROOKS. Mr. Elston has another question.

Mr. LARKIN. Yes, sir.

Mr. ELSTON. Just to get the record clear, does the term "enlisted persons" include warrant officers?

Mr. LARKIN. No, sir; it does not.

Mr. ELSTON. So that when a man demands enlisted men on the court it means persons below the grade of warrant officer?

Mr. LARKIN. That is right.

Mr. BROOKS. I have a question, too. Now the accused must personally request in writing that enlisted persons serve on the court. Suppose you got several accused and one makes a request and one doesn't make a request, what is the situation?

Mr. LARKIN. I assume that severance would have to be granted as to the accused.

Mr. BROOKS. Even though both are charged with identically the same offense involving identically the same set of facts?

Mr. LARKIN. That is right. Because, you see, this is at the option of the accused himself and it is his right to exercise it. On the other hand, there is no authority for anybody to put enlisted men on his court without his request. I can see no solution other than a severance of the case.

Mr. ELSTON. Is it a matter of right that an accused person can demand a separate trial?

Mr. SMART. No. That is discretionary.

Mr. DEGRAFFENRIED. That is the point I asked you the other day, and you said there wasn't any other way.

Mr. SMART. He can as a matter of right request it, but it is discretionary whether or not it shall be granted.

Mr. ELSTON. It seems to me it would be reversible error if he were granted a trial with enlisted men because the enlisted men were given to his codefendant and the court refused his request for a separate trial before an all-officer court.

Mr. LARKIN. I should think so.

Mr. BROOKS. I want to hear from the Colonel on that.

Colonel DINSMORE. I agree with Mr. Elston.

If the committee will indulge me, I would like to address myself one step further on the appointment of enlisted men. The difficulty arises from the language in the act as we have drawn it: "But he

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shall be appointed as a member only if prior to the trial the accused requests it." Therefore, you can't appoint your court until you get right up to the arraignment. Now if we could find some way of saying that he shall not be tried by a court which does not include enlisted men of the number at least one-third of its members if he requests it, then you could appoint a court in advance, you understand, with enlisted men on it and maybe you could appoint another one without enlisted men on it, so that when the man made up his mind you could try it by either court.

Mr. BROOKS. Colonel, if we don't put in some stipulation along that line, here is the result, isn't it: That every enlisted man can get a severance in every case, almost, where there are two or more defendants?

Colonel DINSMORE. I think that will necessarily follow.

Mr. BROOKS. Because the enlisted man can decide in advance 'we want to separate these cases and I will demand enlisted men and you just don't ask for it, and then we automatically have a severance."

Colonel DINSMORE. That seems to me to be inevitable, Mr. Chairman.

Mr. SMART. There is no way to get around that that I see, Mr. Brooks.

Mr. BROOKS. Unless we stipulate here by separate provision that in the event one defendant asked for enlisted men the court shall then be composed of one-third enlisted men.

Mr. LARKIN. I don't think it is necessary, frankly.

Mr. PHILBIN. You think you would rather go ahead and give them a severance in that situation?

Mr. LARKIN. Yes.

Mr. SMART. In any event a severance should be granted.

Mr. ELSTON. Mr. Chairman, I had another question. I believe someone who testified before us indicated that there is a loophole here in that enlisted persons could be excluded if it was considered impossible to obtain competent enlisted persons. Now, can you give us any case in which competent enlisted persons might not be available? There are always more enlisted persons around than there are officers.

Mr. LARKIN. Yes; that is right. That specific provision in subdivision (c) was, as I recall, objected to by Mr. Wolman. It is a difference and one which I wish to point out to the committee. It differs from the provisions of the Elston bill last year.

Last time it was provided, that is your committee provided, for the Army only that where an enlisted man requested enlisted men on his court, he could not be tried unless such enlisted men were on the court, although members of his own company were not competent to sit on that court.

Now, when we addressed ourselves to the problem of enlisted men and tried to make it apply to the Navy as well—and as designed by your committee problems of the Navy I am sure were not before you—it seemed to us that you would have a number of circumstances in the Navy where a man would request enlisted men on his court and by virtue of the fact that none of the men in his own ship's crew, in this so-called unit, were eligible to sit, you might be faced at sea particularly in special courts with the situation that no other eligible men were available.

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The men of his own ship, of course, are not eligible and the problem of trying to transfer some enlisted men on the high seas from another ship is so great that unless you made provision for trying him without enlisted men even though he had requested them in those extraordinary circumstances, you couldn't try him at all perhaps for a lengthy period of time.

Now, we realized that to leave any discretion with the commander was bordering on a situation where there might be criticism that commander would not follow the spirit of this provision and the inten tof Congress that there be enlisted men where the enlisted men wanted them on generals and special courts.

So for that reason we attempted in providing for that isolated exception that in such event the convening authority, if he finds the circumstance is such that there are no eligible enlisted men available at sea, because the ship's crew are not eligible, shall make a detailed written statement to be appended to the record stating why he found it impossible to obtain eligible enlisted men at the time.

Mr. ELSTON. It doesn't say "eligible." It says "competent."

Mr. LARKIN. Well, it is the same notion, I think.

Mr. ELSTON. Well, "competent"—an officer might interpret that to mean a person who is incompetent by reason of lack of intelligence.

Mr. LARKIN. Of course, there is a provision covering that, but our idea as I am trying to reconstruct it would have the exception apply only when there are no eligible men, eligible in the sense or competent in the sense that there are no enlisted men outside of the unit.

Mr. ELSTON. Wouldn't "eligible" be a better word than "competent"?

Mr. BROOKS. I think so.

Mr. ELSTON. I don't know what the term "physical conditions" means, either.

Mr. LARKIN. I think "physical conditions" are the physical conditions that are encountered on the high seas where ships are separated physically. It is very dangerous and very difficult to transfer men from one ship to the other.

And "military exigency" I think has more to do with the isolated unit. In the commentary we set forth further our idea of how restricted the exception should be, where we say in the last paragraph of the commentary—

> The last sentence of the first paragraph of subdivision (c) was added to make it possible to proceed with the trial where competent enlisted persons can't be obtained. This is to avoid long delays in the administration of justice and the expensive process which might otherwise be necessary of transporting witnesses or court members great distances. Such delays and expenses would arise in connection with offenses committed on ships at sea or on isolated units ashore such as remote weather stations. The language of the subdivision makes it clear that mere inconvenience is no ground for proceeding with the trial without enlisted men on the court and the requirement of a detailed written statement of the ground insures that the purpose of the subdivision will be complied with.

Now we intended that that be part of the legislative history, as instructions to the commanders and the people that write the manual that it would only be in the most exceptional type of case that they would proceed and it would only be after the commander writes a statement of the conditions he has faced which made it impossible for him to obtain enlisted men and the statement is to go with the record.

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So it will not just be arbitrary or capricious convenience of his which he could adopt in order to avoid using enlisted men in the event he was the type of commander who wasn't sympathetic with this provision.

Mr. ELSTON. It seems to me, though, the word "eligible" would be a better word than "competent."

Mr. LARKIN. That may be. I think we used the word "competent" because it occurs in the beginning of subdivision (c), in the third line under there, which is a word that we have borrowed from your language.

Your language read just that way, "competent"—and we continued it.

Mr. PHILBIN. Would you have any objection to the substitution of "eligible"?

Mr. LARKIN. I wouldn't think so.

Mr. BROOKS. Then if you do that, would you substitute that all the way through?

Mr. LARKIN. You would have to. I assume the word "competent" was used because of subdivision (d) (2), which is a continuation of the provision of last year's bill which leaves it in the discretion of the convening authority to appoint people of certain competency.

Mr. PHILBIN. Yes. Competency usually goes to mental quality or capacity.

Mr. LARKIN. That is right, and education, training, and so forth.

Mr. PHILBIN. That is right.

Mr. LARKIN. And since that is also a part of it, why it was used. But our notion as to when the exception would operate would be by virtue of there being no one competent in connection with the definition of the word "unit," that is the ship's crew rather than the other.

Mr. ELSTON. Well, with that explanation probably the word "competent" is all right.

Mr. BROOKS. Down in the last sentence of that section you use the word "eligible." You suddenly switch off.

Mr. ELSTON. I would suggest, Mr. Chairman, that Mr. Smart and Mr. Larkin go over this section and if they feel the word "eligible" is more appropriate than "competent," that it be substituted.

Mr. LARKIN. Let us do that.

Mr. BROOKS. That is an excellent suggestion. Unless there is no objection, we will refer it to them and take it up next time.

Mr. LARKIN. May I ask if it is the sense of the committee that the substance as provided in this article is acceptable?

Mr. ELSTON. I hadn't any idea of changing the substance at all.

Mr. LARKIN. I see.

Mr. BROOKS. The only thing that occurred to me is whether it would not be better to put a period earlier there, so that it would read "unless eligible or competent enlisted persons can't be obtained."

Mr. LARKIN. Well, that leaves it wide open.

Mr. BROOKS. I think the thing that really——

Mr. LARKIN. May I say we toyed with the idea "available," but it is a word of——

Mr. PHILBIN. Limitation.

Mr. BROOKS. The thing that ties that down is the succeeding sentence, though, which requires a detailed written statement, because

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"military exigency" and "physical conditions" can cover just about anything.

Mr. LARKIN. Well, I think those phrases are valuable restrictions.

Mr. PHILBIN. The commentary covered it pretty well, I thought.

Mr. LARKIN. I think so.

Mr. BROOKS. Yes.

Mr. LARKIN. We tried to spell that out carefully so the intent was quite clear.

Mr. BROOKS. Any further discussion of it? If not, this article 25 will stand adopted, with the one reservation which we have agreed on.

Mr. LARKIN. Yes, sir.

Mr. BROOKS. Article 26.

Mr. SMART (reading):

ARTICLE 26. Law officer of a general court-martial.

(a) The authority convening a general court-martial shall appoint as law officer thereof an officer who is a member of the bar of a Federal court or of the highest court of a State of the United States and who is certified to be qualified for such duty by The Judge Advocate General of the armed force of which he is a member. No person shall be eligible to act as law officer in a case when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer shall not consult with the members of the court, other than on the form of the findings as provided in article 39, except in the presence of the accused, trial counsel, and defense counsel, nor shall he vote with the members of the court.

References: A. W. 8; Proposed A. G. N., article 24 (b).

Commentary: This article is derived from A. W. 8 with modifications. The law officer is required to be a member of the bar whether or not he is a judge advocate or law specialist. The change in the position of the law officer is reflected in subdivision (b) which requires the accused and counsel to be present when the law officer consults with the court, other than on the form of the findings, and states that the law officer shall not be a voting member of the court. See article 51 as to rulings and duties of the law officer and article 39 as to when the law officer must be present.

Mr. BROOKS. I might ask you this: That includes members of the District bar?

Mr. LARKIN. That is right, Mr. Chairman. I can cite for the record title 28, United States Code, sections 41 and 88, which construe the District of Columbia court as a United States Federal court and clearly includes members admitted to the District Court Bar.

Mr. BROOKS. Mr. Elston, do you have some questions?

Mr. ELSTON. You recall there was a good deal of controversy about subsection (b). That is a departure from present law. I don't know that you stated your position on it, Mr. Larkin. Some of the witnesses who testified about this section objected to it. Others were for it. Now maybe you can enlighten us as to why the present law was changed.

Mr. LARKIN. Yes. I think we have touched upon this problem in a brief manner when we considered articles 39 and 51, which also have to do with the law member and his functions. This represents a change from both Army and Navy practice. The present Army practice provides, since 1920, that each general court have an official known as a law member who rules on interlocutory questions during the course of the trial in the same fashion as we have set out in another article here and provided for this law officer to do.

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In the Army practice, however, this law member retired with the court after the conclusion of the case or the finishing of the evidence and consulted and deliberated with them, instructing them on the law of the case, and then voted with them on the findings and the sentence.

Now the Department of the Navy, on the other hand, has not and never has had such a legal arbiter on its courts. The courts themselves rule on all questions of evidence and when they retire they retire alone.

There is no person who is similar to the Army law member who, of course, for many purposes, is really a judge. In studying the whole problem of what kind of a legal arbiter there should be on general courts the committee was split on the ideal manner of providing the functions of this legal arbiter. There was no question in anybody's mind that there should be one in all general courts martial.

The question turned on what his functions would be. The ultimate decision in this case was made by Mr. Forrestal, that the legal arbiter should rule on questions of law on the trial in the same way the Army law member does at the present time, but that he should not retire with the court and continue to act as a judge insofar as he instructs the court in closed session and thereafter act in effect as a juror in that he votes on the findings and sentence.

The idea principally was to make the law officer more similar to the judge in a civilian court and to act as a pure judicial officer and further for the first time to put on the record in open court the instructions that he does give the court on the elements of the offense and on the presumptions of innocence, reasonable doubt, and various other principles which were put in the law last year by your committee.

It is a difficult problem. There's no question about it. The proponents of the present Army system feel that the law member is of great assistance when retiring with the court and instructing them in closed session. They feel it is a protection for the accused, as a matter of fact.

Inasmuch as no one knows what goes on, however, behind the closed doors and the elements of the crime and the law of the case are not preserved for the record, it is just impossible to tell whether erroneous law is given or not.

The opponents for this type of law officer felt that it was most valuable to have the instructions given to the court preserved on the record so that they could later be scrutinized and reviewed to determine whether or not the law was accurately given to the court so that you could be sure that its verdict was based on the accurate instruction of the elements of the offense and so forth.

The provision as written adopts the civilian idea more nearly than the law member in the present Army and Air Force system does. It is an extension of it.

Mr. BROOKS. Mr. deGraffenried.

Mr. DEGRAFFENRIED. There is nothing in here that prevents the lawyer who is not the law officer from serving on the courts, is there? You might have an officer there or some member of the court or even two or three members of the court who are lawyers themselves.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. Is that possible?

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Mr. LARKIN. I think so.

Mr. DEGRAFFENRIED. Now suppose a law officer were to rule one way on a question of law and the members of the court who were lawyers themselves thought he was absolutely wrong about it, would his ruling be advisory to the court or would it be absolutely binding on them?

Mr. LARKIN. It is absolutely binding, except for the fact of course that any member of the court whether he is a lawyer or otherwise may for his own personal reason not follow them, which is a situation that obtains in any court in the land. The judge may rule on the questions of law and he may instruct the jury and charge them and as it happens the jury goes out and pays no attention to them whatever. But that is something over which no one has any control in any tribunal.

Mr. DEGRAFFENRIED. He acts as the judge on questions of law?

Mr. LARKIN. That is right. He acts as an outright judge on questions of law and his rulings are final and binding. Whether any individual person decides that he doesn't want to follow them or not of course is a different problem.

Mr. BROOKS. It is just binding in reference to interlocutory decisions, isn't it?

Mr. LARKIN. And it is binding on his instructions, before they retire, as to the elements of the offense and on the other law of the case, if necessary.

Mr. DURHAM. He would still have the right to rule on a mistrial, wouldn't he?

Mr. LARKIN. That is right; he has the right. On a motion for a dismissal or a motion for acquittal he has the right to rule, but in that case as in the case of insanity his ruling is subject to veto by the court.

Mr. ELSTON. Well, the theory of the whole thing was, then, to give the accused an additional safeguard?

Mr. LARKIN. That is right, having the instructions on the record and segregating further the judicial functions of the law member from the previous practice where he is a combination of both.

Mr. BROOKS. Is there further discussion on it? If not, and there is no objection to the article, it will stand adopted as read.

The next article, Mr. Smart.

Mr. SMART (reading):

ART. 27. Appointment of trial counsel and defense counsel.

(a) For each general and special court-martial the authority convening the court shall appoint a trial counsel and a defense counsel, together with such assistants as he deems necessary or appropriate. No person who has acted as investigating officer, law officer, or court member in any case shall act subsequently as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act subsequently in the same case for the defense, nor shall any person who has acted for the defense act subsequently in the same case for the prosecution.

(b) Any person who is appointed as trial counsel or defense counsel in the case of a general court martial—

(1) shall be a judge advocate of the Army or the Air Force, or a law specialist of the Navy or Coast Guard, or a person who is a member of the bar of a Federal court or of the highest court of a State; and

(2) shall be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) if the trial counsel is certified as competent to act as counsel before a general court-martial by The Judge Advocate General of the armed force

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of which he is a member, the defense counsel appointed by the convening authority shall be a person similarly certified; and

(2) if the trial counsel is a judge advocate, or a law specialist, or a member of the bar of a Federal court or the highest court of a State, the defense counsel appointed by the convening authority shall be one of the foregoing.

References: A. W. 11; proposed A. G. N., articles 18 (b), 24 (b).

Commentary: Subdivision (a) of this article incorporates the opening clause and the fourth and fifth provisos of A. W. 11. The trial judge advocate is renamed the trial counsel, and the right of the accused to have a person requested by him act as defense counsel is subject to the availability of that person. See article 38.

Paragraph (1) of subdivision (b) incorporates the first proviso of A. W. 11, but the requirement that counsel be qualified as set forth therein is no longer subject to the exception allowed where such qualified persons are not available. Paragraph (2) of this subdivision, the requirement that counsel be certified by the judge Advocate General, is drawn from article 24 (b) of the proposed A. G. N.

Subdivision (c) is based on the second proviso of A. W. 11. It is made applicable only to special courts martial, since the qualification requirements in subdivision (b) with respect to counsel for general courts martial are not subject to exception.

The third proviso of A. W. 11, which has to do with the right of the accused to counsel of his own selection, is covered in article 38, while the sixth proviso, which limits who may act as the staff judge advocate of the reviewing authority, is found in article 6.

Mr. BROOKS. That has reference to general courts martial.

Mr. LARKIN. And special.

Mr. SMART. General and special, Mr. Chairman.

Mr. ELSTON. Mr. Chairman, I would like to ask this question: There is nothing in this section that indicates that the Judge Advocate General shall be a lawyer?

Mr. LARKIN. That is right.

Mr. ELSTON. Well, don't you think that that provision should be written into the law?

Mr. LARKIN. I believe they all are. That is, all those presently serving now all are lawyers. I know they are. And they have been for some time. I believe that years in the past that hasn't always been true.

That question never did come up before us actually.

Mr. BROOKS. Doesn't that get back to the corps proposition?

Mr. LARKIN. No; it does not, necessarily.

Mr. SMART. No.

Mr. LARKIN. As a matter of fact, I don't think the corps provisions in Public Law 759 so stipulated, either.

Mr. SMART. I think that is true, Mr. Chairman. Public Law 759 did not say that judge advocates of the Army or Air Force had to be lawyers. However, you will notice on page 25, in subsection (1), where it goes on and specifies that others who are not members of the Judge Advocate Department or not designated as legal specialists, if they are members of a bar of a State or a Federal bar and certified as competent in addition by the Judge Advocate General, are competent to serve in these capacities.

So a legally qualified individual whether he is or is not a member of the Judge Advocate's Department or corps may be qualified to serve.

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I think it is anticipated certainly that where you provide for others outside of the Department that they must be legally qualified it must be anticipated that members of the Judge Advocate's Corps or Department or a legal specialist must be similiarly qualified, even though the law does not so state, because it gives the Judge Advocate the authority to pass upon his competency and I think he will not approve him unless he is so qualified.

But I did want the record to show that situation and the intent of the committee in regard to it.

Mr. PHILBIN. It would be a rather anomalous situation if you had a judge advocate who was not a lawyer himself passing on the competence of lawyers for assignment to these boys.

Mr. SMART. Exactly, sir.

Mr. ELSTON. Don't you think we ought to spell it out in the law so there would be no question about it?

Mr. PHILBIN. How does the Army feel about that?

Colonel DINSMORE. I didn't hear that, Mr. Philbin.

Mr. PHILBIN. We are considering the question now of spelling out in the law a requirement that the judge advocate be an attorney.

Mr. LARKIN. The Judge Advocate General be an attorney.

Colonel DINSMORE. Well, the Elston bill so requires.

Mr. LARKIN. No, it doesn't——

Mr. PHILBIN. Is that a present requirement?

Mr. SMART. That the judge advocate must be a lawyer.

Colonel DINSMORE. Not the judge advocate, but the Judge Advocate General.

Mr. LARKIN. Mr. Elston was talking about the Judge Advocate General.

Mr. ELSTON. I mean judge advocates generally.

Mr. LARKIN. Generally?

Mr. ELSTON. Yes.

Mr. LARKIN. Oh. On that question, as I understand it, there may be in one or the other of the Judge Advocate Departments as they now exist or in the Office of the Judge Advocate in the Navy an officer or two who has been there for 15 or 16 years who never has been admitted to the bar.

But their current administrative practice is at the present time that no one becomes a judge advocate or a law specialist in the Navy unless he is a lawyer.

Mr. PHILBIN. Is that true of the Army?

Colonel DINSMORE. Our requirement, Mr. Philbin, is that they be graduates of a recognized law school. Uniformly they go on and take a bar examination and get admitted, but you see we send these officers to school—line officers if you please, who apply for it, such as lieutenants.

They go to Harvard, Yale, California, Michigan, and others, and when they graduate they are transferred to the Judge Advocate General's Department. And it is not a requirement that they be a member of any particular bar.

As I say, uniformly, they do go ahead and get admitted.

Mr. PHILBIN. Would the Army object to a requirement that the Judge Advocate General be a member of the bar?

Colonel DINSMORE. I don't think so, sir. I hesitate to go on record for the Army without consulting the proper officials.

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Mr. PHILBIN. On its face, would you see any objection to such a provision?

Colonel DINSMORE. The Judge Advocate General be a member of the bar?

Mr. DE GRAFFENRIED. The judge advocate.

Colonel DINSMORE. Oh, any members of the Judge Advocate General's Department?

Mr. PHILBIN. Well, first the Judge Advocate General. It is the Judge Adovcate General who passes on the competency of these trial officers?

Colonel DINSMORE. Yes.

Mr. PHILBIN. Would you have any objection to that—that he be a member of the bar?

Colonel DINSMORE. If the committee will indulge me, I would like to reserve my answer on that.

Mr. BROOKS. We had better get answers, too, from the Navy, the Air Force, and the Coast Guard.

Mr. LARKIN. Well, may we state the question. Is it in two parts: One, that the Judge Advocate General himself be admitted to the bar, and then, two, that judge advocates or law specialists in the departments will be admitted to the bar?

Mr. BROOKS. That is right.

Mr. LARKIN. On the second one at least I should say if that is provided it probably should be provided prospectively rather than retroactively because the language of (b) (1) was written designedly in this fashion not to exclude a number—and I understand it is a very small number—of judge advocates who are and have been in these departments for some years and who are quite expert in court-martial and military law, but who did not take bar examinations. There are a very few of them, I understand.

Mr. PHILBIN. I had that very point in mind.

Mr. LARKIN. That is why we said (1), they either be a judge advocate or law specialist or if they are not in those categories then they must be admitted to a Federal bar—that is, other officers throughout the service—and (2), they all must be certified by the Judge Advocate General. So there are two requirements in either case.

And to go further, of course you will notice that this is a substantial step beyond what is in the present law in that for a general court the trial counsel and defense counsel must be a person qualified in both respects and no general court-martial case can be tried unless these counsel are so certified.

The words "if available" have been deleted and it is mandatory now that there be such qualified people acting as trial counsel and defense counsel. But it is in either of those categories and it has both those requirements.

We will find out——

Mr. PHILBIN. I did not have in mind that any such provision should be retroactive, but that we might have the opinions of the departments concerned relating to such a provision.

Mr. LARKIN. That is right.

Mr. BROOKS. If there is no objection, we will just refer that to the counsel.

Mr. ELSTON. We might get one other answer before that time. Can the services give us some idea of how many officers might be

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required in each of the services to perform the duties that are required under this section?

Mr. LARKIN. We have some estimates already. But why don't we save them? I don't have the complete ones. May we save them until we bring back the answer on the first two?

Mr. ELSTON. Yes.

Mr. BROOKS. In that connection, the average number of general courts-martial cases per month in the service.

Mr. LARKIN. We will furnish that at the same time, Mr. Chairman.

Mr. BROOKS. Any further questions on it? If not and there is no further objection to article 27, with the reservation which we have made, it will stand approved.

Article 28: Would you read that, Mr. Smart.

Mr. SMART (reading):

ART. 28. Appointment of reporters and interpreters.

Under such regulations as the Secretary of the Department may prescribe, the convening authority of a court martial or military commission or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission. Under like regulations the convening authority of a court martial, military commission, or court of inquiry may appoint an interpreter who shall interpret for the court or commission.

References: A. W. 115; N. C. & B, section 361.

Commentary: This article is derived from A. W. 115. The power to appoint, however, has been shifted from the president of the court to the convening authority, since the latter will have control of the available personnel.

Mr. BROOKS. You have heard the reading of the article. Any discussion on it? If not and there is no objection, it will stand adopted as read.

Article 29.

Mr. SMART (reading):

ART. 29. Absent and additional members.

(a) No member of a general or special court martial shall be absent or excused after the accused has been arraigned except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court martial is reduced below five members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When such new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer the accused, and counsel

(c) Whenever a special court martial is reduced below three members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than three members. When such new members have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

References: A. G. T., article 46; proposed A. G. N., article 27; M. C. M., paragraph 38; N. C. & B., section 375–8.

Commentary: This article is based on proposed A. G. N., article 27, and limits the reasons for excusing members of general and special courts martial.

Subdivisions (b) and (c) specify the procedure for replacing absent members of general and special courts martial. Where a complete transcript of the testimony is kept, only the record need be read to the new members. However, in special court-martial cases where a

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complete record is not kept, only such previous evidence as is stipulated by the parties may be deemed to have been introduced.

New members are subject to challenge for cause and if the parties have not used their peremptory challenges, are subject to peremptory challenge.

Mr. BROOKS. How does that differ from basic law now?

Mr. SMART. Well, I think that that is substantially the same, Mr. Chairman. I believe that every effort is made to protect the rights of the accused. The record has to be read in the presence of the new members of course.

Now, of course, you will notice in subsection (c), that takes cognizance of the fact that you may not have a reporter in a special courts-martial case.

Mr. PHILBIN. Why didn't you provide for a stipulation in subsection (b)?

Mr. SMART. Well, the point there is that you may not have a reporter at a special court case, but the accused's counsel and the trial counsel and the accused may stipulate as to the testimony which had been adduced up to that point.

Mr. PHILBIN. You don't provide that in subsection (b), but you do in subsection (c) and I wonder——

Mr. LARKIN. There is always a reporter. Subsection (b) refers to general courts, Mr. Philbin.

Mr. PHILBIN. I understand that. Why shouldn't it be possible to have a stipulation between counsel for the accused and the trial counsel?

Mr. LARKIN. I think when you have the verbatim record it is preferable that the new member hear the questions and the answers.

Subsection (c) is only in the event you have no verbatim record, and it gives an out by stipulation if there is none. But of course if the accused does not desire to stipulate, they have to start anew.

Mr. PHILBIN. Well, I mean you don't permit them to stipulate in subsection (b), do you?

Mr. LARKIN. No; that is right. I think it is much more desirable that you require the reading of the verbatim record than stipulation.

I might add, Mr. Smart, that the content of this article is in accord with regulations in the services heretofore, but it has not specifically been statutory. We felt that it was important and desirable to make it statutory and it was provided in a fashion similar to this in the proposed Navy bill in the Eightieth Congress.

Mr. PHILBIN. I had in mind the situation where you might have cumulative testimony of several witnesses. Say you had five witnesses. The testimony of two has already been heard. Three are to come along the same lines. A stipulation might well expedite business.

Mr. LARKIN. Yes.

Mr. PHILBIN. Without harming any of the rights of the accused.

But I admit, of course, it is an additional safeguard for the accused and it is entirely desirable.

Mr. LARKIN. Yes.

Mr. SMART. And, of course, you have the comparable situation of a general court always being a court of record, whereas your special court may not necessarily be so.

Mr. PHILBIN. Yes.

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Mr. SMART. So, you abide by the greater formality in the court of record.

Mr. PHILBIN. Yes.

Mr. BROOKS. Now, Colonel Oliver had some objections to this particular article. As I recall, they were objections to subsection (c).

Mr. LARKIN. I think his objections, Mr. Chairman, went to the fact that he would have preferred permitting a court to go on even though it were reduced below these minimum requirements. Perhaps I can find his objection very quickly here.

Mr. BROOKS. Was his objection based upon the thought of double jeopardy?

Mr. LARKIN. I think not. Well, he says and I will read from his formal statement—I have forgotten the questions and answers afterwards—

> As to article 29, subparagraph (a), we feel that this article should specifically state that the law member shall not be excused and in those cases where unable to attend by reason of physical disability or other cause that no proceedings may be had in his absence.

I don't think his objection is well taken because this article concerns members of the court—not law members. We provide in another section that the trial may not proceed in the absence of a law member, now called law officer, under any circumstances.

Mr. BROOKS. Is that his only objection?

Mr. LARKIN. There may be a confusion of terminology in his mind. It is the only comment I see in his formal statement, and, as I say. I do not recall what position he may have taken as elicited by questions from you.

Mr. PHILBIN. You didn't consider that these sections had any double-jeopardy features; did you?

Mr. LARKIN. The double-jeopardy provision operates in the normal fashion. There is no exception to it, certainly.

Mr. DEGRAFFENRIED. Mr. Larkin, when these new members are brought in as members of the court, is there any way to exercise any right to challenge them?

Mr. LARKIN. Yes, sir.

Mr. DEGRAFFENRIED. You have that in.

Mr. LARKIN. Yes. The challenge continues in exactly the same way. And, if you haven't used your peremptory challenge, why it is available against the new member. And we spell that out specifically in the commentary, the last paragraph of which says:

> New members are subject to challenge for cause, and if the parties have not used their peremptory challenges are subject to peremptory challenge.

But this is designed to ensure, if a court falls below the set minimums, a man will not be convicted with less than these minimums.

If a man is sick or dies—that is a court member—and if you can't replace him, a mistrial results.

Mr. BROOKS. Mr. Elston, do you have some questions?

Mr. ELSTON. No.

Mr. BROOKS. Any further questions? If not and there are no further suggestions, gentlemen, article 29 wlill stand adopted as read.

Now that completes part V which we passed and which will bring us back at the next session of this committee to the article——

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Mr. SMART. Article 59, Mr. Chairman.

Mr. BROOKS. Fifty-nine.

I think it would be useless to start on anything new at this session of the committee. We will go over, then, at the next session to 59.

Now, there are several matters which we bypassed, and we haven't come back to them. It is such a late hour, I think it would be wise to pass these, too.

Mr. LARKIN. May I make this suggestion—I will do it any way you desire. We have been working on the half a dozen articles which you have instructed Mr. Smart and myself to furnish some clarifying language on.

We are in fairly good position to offer those to the committee, but I wondered if we might not hold them because there will be others I believe as we continue our reading.

Mr. BROOKS. Yes.

Mr. LARKIN. We might hold them to the last hour of your entire considerations, when Mr. Smart can offer them article by article, and you can quickly clean them up, I think, all at once.

Mr. BROOKS. I think that is all right. There is not enough there to engage the attention of the committee for any lengthy time.

Mr. LARKIN. I don't think so. We are, of course, attempting to draft them in accordance with your instructions, and your function will be to make sure that we have. That is about all.

Mr. BROOKS. We are very anxious to finish the bill, but not so anxious that we want to neglect any part of it. I would like to sit this afternoon, but we have the oleo bill coming up, and I suppose that some of us are in shape where they want to be present all the time on that oleo bill, and, therefore, if there is no objection, the committee will stand adjourned until 10 o'clock in the morning.

(Whereupon, at 11:55 a. m., the subcommittee adjourned to reconvene on Friday, April 1, 1949, at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

FRIDAY, APRIL 1, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE No. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will please come to order.

Before we start on the next article, my colleague, Mr. Kilday, just mentioned to me the case of the American post-exchange worker from Germany who was recently apprehended over here and charged, as I understand it with black-market operations in Germany. He has been taken back to Germany for trial.

Now, in cases of that sort, are there any regulations regarding the removal of accused persons from one section of the country or one continent to another? There is no extradition procedure in the service; is there?

Mr. LARKIN. No. They are subject to the Articles of War by virtue of either being military personnel or civilians who come under the jurisdiction.

Mr. Brooks. Wherever the offense occurs, they can be tried?

Mr. LARKIN. That is right.

Mr. BROOKS. And they can be moved from one place in the world to another?

Mr. LARKIN. Yes, sir.

Mr. BROOKS. Without any extradition?

Mr. SMART. I think the facts in that case were, briefly, from what I gather from the newspaper, Mr. Chairman, that the civilian was serving as a manager of a PX in Germany by virtue of a contract with the Government and he misappropriated cigarettes or some other articles of merchandise and engaged in black-market activities.

Then he violated the terms of his contract and, in effect, went a. w. o. l. from his duty and got back to this country. He, at the time of the commission of the offense, was subject to the Articles of War. So, having gone a. w. o. l. and still being subject to being prosecuted, they merely came to this country, apprehended him and flew him back. And he is already back in Germany now.

Mr. BROOKS. But not for a. w. o. l.?

Mr. SMART. No, sir.

Mr. BROOKS. A civilian couldn't go a. w. o. l.

Mr. SMART. No. But the point is there he left Germany while subject to the Articles of War.

Mr. BROOKS. Yes.

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Mr. SMART. He voluntarily left and without permission, or without termination of his contract with the Government.

Mr. BROOKS. Yes.

Mr. SMART. So they contend, and I don't say rightly or wrongly, they have a continuing jurisdiction.

Mr. BROOKS. Well, I don't think we should go into petty cases. The question that I thought was pertinent is the question of extradition there, and I knew of no provisions requiring extradition in service, regardless of where a man is.

Mr. LARKIN. Yes.

Mr. BROOKS. In civilian life, you would have extradition proceedings.

Mr. LARKIN. Yes, sir.

Mr. BROOKS. Now, when we adjourned yesterday, we were on what article, Mr. Smart?

Mr. SMART. We had concluded article 29, Mr. Chairman. You will recall that you had requested that certain statistics be furnished to the committee as to the number of legally qualified personnel now available in all of the services. That inquiry goes to article 27.

Admiral Russell is here and may wish to be heard on it. And the committee might wish to settle that particular point at this time.

Mr. BROOKS. That would be an excellent idea. If you have the statistics and ready to report on it; yes.

Mr. LARKIN. Maybe Mr. Larkin has some background to give to the committee before Admiral Russell goes on?

Mr. LARKIN. No. I think I have some of the statistics on the Army and Air Force, although the representatives may have more statistics than I have. But I don't have them for the Navy; and I think, if you would let Admiral Russell put them in the record, we could do that first and then follow with the others on the same subject.

Mr. BROOKS. Fine, sir. You have them, do you, Admiral?

Admiral RUSSELL. As I understood, there were four questions asked over here relating to naval statistics—some of it to numbers and some of it to qualifications of our law specialists.

Mr. SMART. That is right.

Admiral RUSSELL. I don't have any prepared statement to put in the record. I can just answer it, though.

Mr. BROOKS. All right, sir.

Admiral RUSSELL. We have at the moment 241 law specialists. We have 30 naval Reserve officers who have been retained on active duty.

Mr. BROOKS. Now, when you say "We," you mean the Navy?

Admiral RUSSELL. I mean the Navy; yes, sir.

Mr. BROOKS. Yes.

Admiral RUSSELL. In addition, there are, I believe, 48 unrestricted line officers with a law education and who are qualified for that duty; but, of that number, there are only six or seven who are now working at it.

Mr. RIVERS. When you say that number, you say only six or seven of that number, you mean with the basic background to qualify them to be lawyers?

Admiral RUSSELL. I mean the naval officers who went to law school.

Mr. RIVERS. I say the basic background, and who had some experience in it?

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Admiral RUSSELL. Yes, sir.
Mr. BROOKS. You have 241 law specialists?
Admiral RUSSELL. That is correct, sir.
Mr. BROOKS. Now, how many of them are qualified to practice fore the high State court or Federal court?
Admiral RUSSELL. I still don't have that figure. When we took em in, our requirements for eligibility were that they should be her graduates of an accredited law school or admitted to practice fore the court of last resort in some jurisdiction.
So far as we know, nearly all of them are members of the bar somenere. There may be some small number that for some reason or her did not get admitted. I will have those figures and put them in e record. I don't believe there are over 15 or 20 of them.
Mr. BROOKS. You mean 15 or 20 what?
Admiral RUSSELL. That are not members of a bar somewhere.
Mr. BROOKS. Yes. And they are graduates of some law school?
Admiral RUSSELL. Yes, sir.
I might say—I would like to put this off the record.
(Discussion off the record.)
Admiral RUSSELL. This can go on the record now.
All our law specialists are either members of a bar, admitted to ractice before the court of last resort in some jurisdiction, or they are raduates of an accredited law school by—I can't think of the name f the association. I believe it is the Association of American Law chools.
Mr. BROOKS. The other day when we were discussing it, it occurred o me that the rule might be fashioned so as to adapt itself to your ituation, that is, a graduate of an accredited law school or a member f the highest State tribunal.
Mr. RIVERS. That is right.
Mr. BROOKS. I mean they are entitled to practice before the highest tate court or the Federal courts.
Mr. SMART. On the basis of article 27, you will note that there is othing in the article which makes any requirement that they be a raduate of an accredited law school.
Mr. BROOKS. No.
Mr. SMART. That is a matter of regulation within the Department. The statute only prescribes that he shall be admitted to practice before State or Federal bar.
Admiral RUSSELL. That is the way we have regarded it. And that would represent no departure from our present practice.
Mr. BROOKS. Yes. But I mean in order to conform to the present practice, if we amended this article so as to cover graduates of an accredited law school, it seems to me that would be a pretty safe course to follow.
Admiral RUSSELL. Yes, sir; I would think so.
Mr. BROOKS. I don't know, though, why a man when he graduates from a law school won't immediately become a member of the bar. Of course, I can see where he might fail to qualify with the supreme court of the State or in New York the court of appeals which is the highest court there. And he might fail to go to the Federal court to qualify.

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Mr. SMART. You have that very situation in the Army today, with a very capable general officer who graduated from an accredited law school but never was admitted to the bar.

Mr. BROOKS. Now would that catch everybody in the Navy today?

Admiral RUSSELL. Yes, sir.

Mr. BROOKS. What about the other branches of the service?

Admiral RUSSELL. I can't speak for them, sir.

Mr. BROOKS. Do you have any other figures you want to put in now, Admiral?

Admiral RUSSELL. There was one other question asked as to how many additional lawyers we estimate we will need under the terms of this bill.

Mr. BROOKS. Yes.

Admiral RUSSELL. Our computation shows that we need 287 more.

Mr. BROOKS. Two hundred and eighty-seven more.

Mr. RIVERS. Do you say, Admiral, that you have lawyers in your set-up who are not admitted to any jurisdiction?

Admiral RUSSELL. A very few; yes, sir.

Mr. RIVERS. How are you going to cure that? How are we going to cure that? There is no question about their abilities. They are doing the work every day.

Admiral RUSSELL. That is correct.

Mr. RIVERS. And from your own testimony, you have the finest system in the whole world?

Admiral RUSSELL. My predecessor was one of those.

Mr. RIVERS. Yes, sir.

Mr. BROOKS. Well, you would cure it, wouldn't you, by amending this so as to say that any graduate of an accredited law school might be used.

Mr. RIVERS. Or admitted.

Mr. BROOKS. Or admitted.

Admiral RUSSELL. That is correct. We put it in the alternative when we wrote our eligibility rules.

Mr. DEGRAFFENRIED. What does it mean to be an accredited law school?

Admiral RUSSELL. There is an Association of American Law Schools, as I understand it, which establishes certain standards and any school that meets those standards is accredited.

Mr. DEGRAFFENRIED. In some States if you graduate from the State university you are automatically to practice law without any examination.

Admiral RUSSELL. If I am not mistaken, there used to be a rule at one time that any citizen in good standing could be admitted to the bar in some States.

Mr. BROOKS. In my State, in Louisiana, they graduate from the best law schools and sometimes they fail the bar. But you are pretty safe in taking a graduate of an accredited law school.

Mr. RIVERS. That is right. Of course, there are two reasons for that. One of them was the States wanted to protect their own universities, and then the other reason they gave us was that they shouldn't admit a man to the bar unless he knew something about State statutes.

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Admiral RUSSELL. I dare say that it is easier in some instances to get admitted to the bar than it is to get a degree from an accredited law school.

Mr. RIVERS. That is probably true. I know if I had my experience to go——

Mr. DEGRAFFENRIED. Harder or easier to get admitted to the bar?

Admiral RUSSELL. Easier.

Mr. DEGRAFFENRIED. Easier to get admitted to the bar.

Admiral RUSSELL. That isn't true in some places, but I think it is true——

Mr. RIVERS. Knowing what I did when I took that blooming thing, I wouldn't have taken it for a million dollars. It was just impossible to finish in my State.

Mr. DEGRAFFENRIED. In a great many States now you can't even get into a law school until you have had a certain amount of A. B. work or scholastic work in other schools—2 years or 3 years.

Mr. RIVERS. That is right.

Mr. BROOKS. Mr. Smart.

Mr. SMART. I think the additional point ought to be reiterated here which was made yesterday by Mr. Larkin, and that is that this provision here is something which is intended to apply in the future and not to apply retroactively. I know, within my own personal knowledge, instances of a number of officers, particularly Army and Air Force, who are not law-school graduates but are doing judge advocate work.

I doubt if they ever had any legal training. But because of their particular ability and intelligence and long experience in court-martial work they have become very, very competent—more so in many cases than a great many legally trained persons.

Mr. RIVERS. They had no legal training?

Mr. SMART. They have had no legal training, but by association with court-martial work and by personal intelligence——

Mr. DEGRAFFENRIED. And studying courts martial.

Mr. SMART. And studying it diligently and faithfully they have become very proficient in the trial of cases.

Mr. RIVERS. They should know something about evidence.

Mr. SMART. Well, they do know something about evidence. I think it would probably be unfortunate, I will say, if we took action here which would prevent the services from availing themselves of the services of such qualified people. I am sure that none of the judge advocates are going to certify as competent any of those people who they do not of their personal knowledge know are competent.

Mr. RIVERS. You mean, if that goes for the past it can go for the future. Now I can appreciate fully what you are talking about. You just can blanket them in. But it certainly can happen in the future. And you know, I have heard all kinds of things like you no doubt have heard—and this is off the record.

Mr. BROOKS. We want this off the record.

(Statement off the record.)

Mr. SMART. Let me ask, back on the record, again, Mr. Rivers, if you feel that the committee should amend article 27 to provide that law specialists and judge advocates shall be legally qualified in the future?

Mr. RIVERS. In the future?

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Mr. SMART. In the future.

Mr. RIVERS. That is right.

Mr. SMART. And that he be a law graduate.

Mr. BROOKS. What type now are you referring to? Either a graduate of an accredited law school or entitled to practice before the highest State tribunal or the Federal court?

Mr. SMART. Yes, sir.

Mr. RIVERS. That is right.

Mr. SMART. And that closes the gate that you are talking about.

Mr. DEGRAFFENRIED. Because while those untrained men are getting the experience that makes them qualified a lot of cases are being tried in the meantime.

Mr. RIVERS. That is right. That is my point.

Mr. BROOKS. I would like to put in the record, too, as to this idea of permitting a graduate of an accredited law school to be eligible for appointment this thought: In my State, following the completion of your work in a law school you are required to take a bar examination before the supreme court and which is a very strict examination.

Sometimes as much as several months might elapse from the time you finish your course and the time you take the examination and it is possible that a graduate of a law school fully accredited might not have an opportunity of qualifying before the bar because of that fact.

Admiral RUSSELL. Well, our experience when we went into our procurement program here 3 years ago was that we didn't look out. We handcuffed ourselves by making the rules too rigid, and we would keep out some fellow that is really pretty good.

Mr. RIVERS. That is right.

Admiral RUSSELL. And we came up with this alternative eligibility requirement which has worked very well for us.

Mr. RIVERS. Of course, if you don't follow the procedure Mr. Brooks indicated by giving them an opportunity to get in there when they get out of school, they may be too old under the bill we passed a year or two ago about coming in under the wire as to age for being an officer.

Mr. BROOKS. Do you have anything, Mr. Elston, you want to say on that?

Mr. ELSTON. No. I think if you have the bill amended to except those already in the service and then confine it in the future to those who come in the service hereafter, graduates of accredited law schools or those who have been admitted to practice in the highest State court or in the Federal court, it will take care of it very well.

Mr. BROOKS. I think we are unanimous in that agreement and unless I hear objection I am going to suggest, Mr. Smart, if you will, to frame an amendment that we can work it in there at the very next meeting.

Mr. LARKIN. May I ask a question for guidance, Mr. Chairman. When you say that they in the future are eligible if they are either graduates of an accredited law school or admitted to the bar you are talking, I take it, of judge advocates or law specialists who are officer personnel and are officially a part of either a corps, a department, or the office of the Judge Advocate General.

Mr. BROOKS. That is right.

Mr. LARKIN. But as to other persons in the service who are qualified—and in wartime you have a lot of lawyers who come in and become officers and who are members of the bar—they be members of the bar in addition to being accredited by the Judge Advocate General or certified by him.

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You see, there are two notions here that you should keep in mind, and that is that insofar as judge advocates or law specialists are concerned, I think it is entirely appropriate that they be graduates of an accredited school or members of the bar.

Now you may have a number of other lawyers in the service who you will have to use for the trial of cases, particularly in wartime, and who you should use and must use. It was the notion of Professor Morgan's committee as to those the requirement should be admission to the bar.

Mr. BROOKS. Why is there that difference?

Mr. LARKIN. Because they are not doing the court-martial work daily that the judge advocates or the law specialists are doing.

Mr. ELSTON. They are not specialists?

Mr. LARKIN. They are not specialists.

Mr. BROOKS. You mean——

Mr. LARKIN. But if they at least are admitted to the bar, which generally is the more severe test, a test that is generally more severe than graduating from an accredited law school, why the test should be a little more severe in that respect.

Mr. BROOKS. Is it to give them training? Is that your thought?

Mr. LARKIN. No, to give assurance of greater capability.

Mr. ELSTON. I think that is right, because today there are lots of men not able to pass the bar examination. Out in Ohio they flunked about 50 percent of them this year.

Mr. LARKIN. They do in New York, too, all the time.

Admiral RUSSELL. They do in the District of Columbia.

Mr. RIVERS. They do it just about everywhere.

Mr. ELSTON. There are some persons in the State of Ohio who have taken bar examinations a number of times and have never been able to make it. Now you don't want to get that type in the service.

Mr. LARKIN. And I don't think that type——

Mr. ELSTON. Yet what the admiral said is true, too, that it is sometimes easier to get through the bar examination than it is to get through law school because some States have a very simple requirement, such as only an oral examination. You go before a judge in some States and he asks you a few questions and you are admitted to the bar. That is all there is to it.

Mr. LARKIN. That is right.

Mr. BROOKS. Furthermore, in reference to those who failed before the bar, a great many of them that take the bar examination may not be graduates of any accredited law school and therefore your percentage of failures is very heavy on that account.

But I will fully agree with what you say.

Mr. LARKIN. Yes. I just wanted to point out the distinction.

Mr. BROOKS. Yes.

Mr. LARKIN. I think it is appropriate, certainly, that this double standard that Admiral Russell suggests and uses is an adequate protection for his law specialists or the judge advocates because he himself will watch them over a period of time as they work in his office and he can appraise their ability. But where you get to the point that you need lawyers for the trial of cases over and above that number—and you certainly will in wartime—why the requirement should probably be admission to the bar for those extra lawyers.

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There, again, the Judge Advocate General will certify them, but his opportunity of learning their capabilities is not nearly as good as the opportunity he has for the people who work in his own office.

Mr. BROOKS. Mr. Smart, you understand the situation there. We want it limited to that group.

Mr. SMART. Yes. I think we are belaboring the statute, though, by trying to do this. Now I think you have to assume that the Judge Advocate General himself is going to have some pride in the people who are going to administer the military law under his direction.

You provided here, on page 25, in subsection (2), that in addition to these other requirements they shall be certified as competent to perform their duties by the Judge Advocate General. Now if the respective Judge Advocates General are the type of persons that I think they are and I hope the future ones will be, they are not just going to open up these doors and let everybody come in.

We must remember that during the past war there were some 25,000 lawyers who were members of the bar who came into Army service. Now the Army saw fit to only use about 2,000 of them in courts-martial work.

However, they were readily available. And in any wartime situation you are going to have all of the lawyers you want who are going to be members of the bar. I think we could very safely trust the judgment and the discretion of the Judge Advocates General as to that qualification.

Mr. RIVERS. I don't see how that is going to conflict.

Mr. GAVIN. Neither do I.

Mr. RIVERS. I don't see the conflict.

Mr. GAVIN. You are merely assuming we are going to have. If you write it into the law, we will know we have.

Mr. BROOKS. The trouble is in time of war they have had a surplus. Men with law degrees and who were competent lawyers were serving as privates in the ranks, which showed a surplus certainly of lawyers.

Mr. SMART. That, of course, goes to the philosophy that was followed during the last war wherein many commanders did not want lawyers in their courts because they said that they talked too much and made too many technicalities and this, that, and the other.

You have a surplusage of lawyers available, but you don't have a surplusage of them being used.

Mr. RIVERS. One of our most able young lawyers from South Carolina came to me. He had a very fine practice. The Navy gave him a billet over at St. Elizabeths. That is how they used them.

Mr. BROOKS. Well, let us get back to the case here.

Mr. GAVIN. Off the record.

(Statement off the record.)

Mr. BROOKS. Now coming back to this case, is there any objection to the suggestion as made? If Mr. Smart will prepare a suitable amendment, we will take it up the next time. If there is no objection, it is so ordered.

Mr. SMART. Do you care to receive, Mr. Chairman, any statistics Mr. Larkin has as to the Army and Air Force on this same point?

Mr. BROOKS. Sure, if he has them.

Mr. LARKIN. Well, I just have the comparable statistics to Admiral Russell's.

Mr. SMART. I would like to ask one more question of Admiral Russell, if I may.

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Mr. BROOKS. Sure.

Mr. SMART. Where do you propose to get these 287 lawyers, and how long do you think it will take to get them?

Admiral RUSSELL. It took us 2½ years to recruit 240 lawyers that were acceptable to us the last time. We have since obtained authority under the Officer Personnel Act of 1947 to take in lawyers directly from civil life and commission them as lieutenants, junior grade.

We took in 10 of those this last October. One source of supply for the 287 lawyers is the law schools and some members of the Naval Reserve who might be interested.

Mr. RIVERS. That ought to be a good source—that Naval Reserve.

Mr. SMART. Let us ask you, Admiral, do you give a constructive credit to these men coming in as lieutenant; junior grade for their 3 years of law school

Admiral RUSSELL. We do. But the individuals who became law specialists before the Personnel Act of 1947 went into effect do not have it.

Now that the subject has been brought up, I would like to inform the committee that we have a measure which has not yet gone to the Bureau of the Budget which will cover this whole situation, namely the procurement of lawyers and the readjustments we have to make in our rank structure to fit them in where they belong.

Mr. BROOKS. What do you mean by that constructive credit that Mr. Smart referred to—for retirement purposes?

Admiral RUSSELL. The idea is this, Mr. Chairman. An individual who goes to a graduate school and from there into the service has spent his own time and his own money getting his education. He is credited with that period for constructive service. That is done in the case of doctors and it is done with others.

Mr. BROOKS. Well, is it for pay purposes that you give him that time?

Mr. GAVIN. For longevity?

Admiral RUSSELL. For longevity, yes, sir; for all purposes.

Mr. BROOKS. You give it to doctors?

Admiral RUSSELL. He comes in as a lieutenant, junior grade, instead of an ensign.

Mr. RIVERS. When you say constructive credit, he gets 4 years?

Admiral RUSSELL. Three years.

Mr. RIVERS. Three years.

Mr. BROOKS. What about graduates of Annapolis?

Admiral RUSSELL. They don't get it. They start out as ensigns.

Mr. RIVERS. Yes.

Mr. GAVIN. Their period of service at the Academy is accredited for longevity purposes, isn't it?

Admiral RUSSELL. No, sir.

Mr. RIVERS. No.

Mr. BROOKS. Subcommittee No. 2 has that question up now.

Mr. RIVERS. They have been trying to get that bill through for years.

Mr. SMART. I have one more question, Mr. Chairman.

Mr. BROOKS. All right, Mr. Smart.

Mr. SMART. Considerable discussion has been had here as to the interruption of a legal specialist's or a legal officer's career in the Navy by virtue of the fact that he is rotated from legal duty to sea duty.

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I am wondering what the plan of the Navy is as to the usage of these approximately 500 officers who are now desirable. Does the Navy intend to rotate those men from perhaps a 3-year tour of duty ashore, wherein they perform as legal specialists, and then send them to sea as a line officer in the command of a ship or something, or does it anticipate that they shall continue to do legal duties while they are at sea or ashore?

Admiral RUSSELL. The law does not permit them to command anything. The present practice of rotation is from 4 to 5 years on shore duty and about a year and a half or 2 years on sea duty, but that sea duty is not the type of duty where they get much salt in their whiskers.

They continue to do legal work when they are in what we call sea billets and also outside of the continental United States. For example, we have a number of officers out at Guam. We have some working on the governor's staff and we have others that have been participating in war crimes trials. For purposes of rotation we consider that duty out there the same as we do sea duty.

Mr. RIVERS. Of course that rotation gives them a well rounded experience.

Admiral RUSSELL. Our theory is the more they know about the Navy the better Navy lawyers they will be. But they do not rotate from sea to shore in the same fashion as unrestricted line officers do.

Mr. SMART. The point I wanted to make there, Mr. Chairman, was that there are some unrestricted line officers. I think Admiral Russell here is one of them. His predecessor, Admiral Colclouth, is one of them. Captain Nunn, whom you all know and is now commanding a cruiser, the *Manchester*, is such an officer.

How many are there of those in the Navy as of now?

Admiral RUSSELL. We have a total of I think 45 or 48, but as I said previously there are only 6 or 7 of us who are working at law. That provides what we consider the leavening, if you will, of the legal knowledge we have in the service.

Mr. GAVIN. Getting back to that, what did you call it, constructive period——

Admiral RUSSELL. Constructive service.

Mr. GAVIN. Constructive service.

Well, now, supposing you take these young men in regardless of what rank you gave them and grant them this constructive service period for their record, how about the boys from the Naval Academy? Won't they feel quite concerned about that, in event that a similar constructive service isn't granted to them for their longevity record?

You are going to have a feeling in there because right away they are going to say "Wait, now, why this discrimination here."

Mr. RIVERS. Everybody uses that term now.

Mr. ELSTON. Well they hope to get that in this bill that is pending now.

Mr. GAVIN. They hope to get it, but they haven't it. If this bill goes through and you have written this in, then certainly it will be questioned.

Mr. BROOKS. Now——

Mr. RIVERS. We do this. We give every doctor or dentist in the Navy $100 more. You take the Chief of Dentistry. He gets a hundred dollars a month more than you get, I think.

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Admiral RUSSELL. I doubt that.

Mr. RIVERS. Well, maybe you are an exception.

Mr. BROOKS. Now——

Admiral RUSSELL. But he would if I weren't in my present job.

Mr. RIVERS. Yes.

Mr. BROOKS. I would like to say this. I think it is all right to go into these things as carefully as we wish to, but I call the committee's attention to this fact: We have no authority to legislate on that particular matter since it is in the pay bill and it is being already considered by Mr. Kilday's subcommittee. I don't think we ought to go into the question of legislating on it.

Admiral RUSSELL. If the measure, Mr. Brooks, which I mentioned is referred to this subcommittee, which I hope it will be because it is intended to supplement this bill now before the committee, I would suggest that the time to talk about it.

Mr. LARKIN. That is right.

Mr. BROOKS. Yes.

Mr. ELSTON. I would like to ask the admiral a question.

Admiral RUSSELL. Yes, sir.

Mr. ELSTON. How many men do you have now in law schools?

Admiral RUSSELL. I think, 24, sir.

Mr. ELSTON. And how many in the Army and the Air Force?

Mr. LARKIN. In law schools now?

Mr. ELSTON. Yes. How many have you assigned to law schools?

Mr. LARKIN. Do you have that figure?

Colonel DINSMORE. I will get that, Mr. Elston.

Mr. ELSTON. All right, will you get it, Colonel, and put it in the record.

Colonel DINSMORE. Yes, sir.

Mr. RIVERS. Admiral, let me ask you, there wouldn't be any joker in this thing anywhere down the line if a line officer were subsequently put into this corps or in this new set-up by way of longevity, would there?

Admiral RUSSELL. No, sir.

Mr. RIVERS. I mean it couldn't work that way, could it?

Admiral RUSSELL. No, sir. We have a provision written in this proposed bill that would prevent that.

Mr. RIVERS. Because you could say he should be with his running mate or whatever it is and therefore he ought to have 3 years given to him on longevity because if he hadn't done this he would be this. Can you see what I am driving at?

Admiral RUSSELL. Yes, sir.

Mr. BROOKS. Mr. Larkin, you have figures on the Army and the Air Force. I am thinking of this: Perhaps you could just put those in the record. Do they need other explanation?

Mr. LARKIN. Fine.

Mr. BROOKS. We are running a little late here.

Mr. LARKIN. Yes, sir. I don't think there is any need for explanation.

Mr. BROOKS. If you will put them in the record the committee will be grateful to you.

Mr. LARKIN. Yes, sir.

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(The information referred to is as follows:)

The Department of the Army now has on duty 793 officers who can qualify as law officers and trial counsel. They estimate that they would need a total number of 1,100 officers to satisfy the requirements of articles 26 and 27.

The Department of the Air Force now has on duty 274 officers who can qualify as law officers and trial counsel. They estimate that they will need a total of 750 officers so qualified to meet the requirements of articles 26 and 27.

Mr. BROOKS. Let us go back to the articles.

Mr. SMART. We are now ready for article 59, on page 49 of the bill.

Mr. BROOKS. All right.

Mr. SMART (reading):

ART. 59. Error of law; lesser included offense.

(a) A finding or sentence of a court martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

References: A. W. 37, 47 (f), 49 (a); proposed A. G. N., article 39 (d), (e); N. C. and B., section 472.

Commentary: Subdivision (a) is adapted from A. W. 37. In light of certain new procedural requirements in this code, such as the requirement that the law officer of a general court-martial instruct the court as to the elements of the offense, this subdivision is an extremely important one and should be given full force and effect. On the matter of technical errors N. C. and B., section 472 contains the following statement:

If there has been no miscarriage of justice, the finding of the court should not be set aside or a new trial granted because of technical errors or defects which do not affect the substantial rights of the accused.

Subdivision (b) is taken from A. W. 47 (f), 49 (a) and article 39 (d), (e) of the proposed A. G. N. MCM paragraph 78 (c) defines a lesser included offense as follows:

The test as to whether an offense found is necessarily included in that charged is that it is included only if it is necessary in proving the offense charged to prove all the elements of the offense found.

Mr. BROOKS. That subsection (b) means that if a man is tried for murder, and they find an error committed, the appellate court could still hold him or find him guilty of manslaughter?

Mr. LARKIN. That is right.

Mr. BROOKS. And in reference to that term "error materially prejudices," exactly haw far does that go?

Mr. LARKIN. Well, it is provided so that there will not be a setting aside of a finding of guilty for technical reasons or for minor errors of law which do not prejudice the rights of the accused.

Mr. RIVERS. Minor.

Mr. DEGRAFFENRIED. Is that sometimes spoken of as error without injury?

Mr. LARKIN. I should say that is just about the notion, yes.

Mr. PHILBIN. Are you speaking now about section (b)?

Mr. LARKIN. Section (a).

Mr. PHILBIN. Subsection (a). How about subsection (b), what is your reasoning on that?

Mr. LARKIN. Well, that is to give the reviewing authorities latitude in the review of a case where a man has been charged with let us say

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murder and he has been found guilty of it but the reviewing authority finds that one element of the crime of murder has not been proved but without that element a lesser included offense has been proved.

And while we do not in our punitive articles have degrees of crime in the sense of grand larceny in the first or second degree as you find in civil courts, the idea is analagous. For instance, in a grand larceny in the first degree charge, assuming you had one where one of the elements was that property exceeding $500 in value was taken and the man is convicted of it and the reviewing authority feels they made an error in the value and it was only $250 and they would be perfectly satisfied he was guilty of grand larceny in the second degree and not in the first, they could reduce the finding to a lesser included offense, just as the court can itself when it tries the case and finds the man guilty of a lesser included offense than the one he is charged with.

This extends that authority to the reviewing authorities, because several of them have a review of the facts as we will see.

Mr. RIVERS. Up in (a) there, of course with regard to the fellow who appeals on the ground of an error of law, the burden of proof then is on him to prove that it has materially affected the rights of the accused.

Mr. LARKIN. That is right. I think that is a common rule in civil practice and it has been generally applied in courts martial. You can't try a case—the finest trial judge probably can't try a case—without making some technical error occasionally, but the error is so inconsequential that the substantial rights of the accused have not been prejudiced at all and there is no reason why the verdict should be set aside by virtue of minor or technical errors. If you have a substantial error or an error that prejudices his substantial rights, why then of course it should be set aside.

We have taken this from the statute and we have emphasized it because we have as you have noticed made the trial of a case and the review of a case more legal in that we have required lawyers and we have required instructions to the court on the record.

Now we feel it is progress to do that, but on the other hand we do not feel that anything is gained by making the system so technical that you can have reversals for minor technical errors. We feel strongly that you should not have reversals for errors of that character.

Mr. PHILBIN. Do you have in your commentary some illustration of an error that would be reversable under this section?

Mr. LARKIN. No, we have not.

Mr. SMART. You could revert to your case of murder, again, where the elements would all be the same except for malice aforethought.

Mr. PHILBIN. That disturbs me, too. That relates to section (b). I mean you could charge a man with murder and wind up convicting him of simple assault.

Mr. SMART. That is right.

Mr. LARKIN. Only if it is an included offense. But that is a standard practice in every jurisdiction.

Mr. PHILBIN. I mean is it an included offense?

Mr. LARKIN. Assault.

Mr. PHILBIN. I mean, would it have to be an included offense under this section? Take for example a case of where you find a man guilty of murder on charges of murder and only on charges of murder.

Mr. RIVERS. It couldn't be simple assault.

Mr. PHILBIN. Could the reviewing authority then find the man not guilty of murder but guilty of simple assault?

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Mr. LARKIN. I think he might. But he couldn't find him guilty of larceny or he couldn't find him guilty of robbery.

Mr. PHILBIN. I understand that.

Mr. LARKIN. Assault is a lesser included offense of murder.

Mr. PHILBIN. I mean it would work the same way with larceny. He might be charged with grand larceny and found guilty of course and the reviewing authority might find him guilty of some petty larceny.

Mr. LARKIN. That is right.

Mr. PHILBIN. That is your interpretation of an included offense.

Mr. LARKIN. That is right.

Mr. ELSTON. Well, this section states the law exactly as it is in the civil courts.

Mr. LARKIN. That is right, Mr. Elston.

Mr. DEGRAFFENRIED. Mr. Larkin, as I see it, the only difference here is if they find him guilty of a lesser offense instead of sending it back for a new trial and having the whole thing to go over again they just save that time and expense and everything else by reducing it to the lesser offense and fixing the penalty.

Mr. LARKIN. That is right.

Mr. BROOKS. This is not changed from what the present statute is, is it?

Mr. LARKIN. That is right, nor is it changed from the civil practice.

Mr. BROOKS. Yes. Is there any objection to it? If not, it stands adopted.

Article 60.

Mr. SMART (reading):

ART. 60. Initial action on the record.

After every trial by court martial the record shall be forwarded to the convening authority, and action thereon may be taken by the officer who convened the court, and officer commanding for the time being, a successor in command, of by any officer exercising general court-martial jurisdiction.

References: A. W. 35, 47 (c); N. C. & B., section 479.

Commentary: This article is taken principally from A. W. 47 (c). There is no similar provision in the AGN, but NC&B, section 479 provides that the reviewing power vests in the office, not the person, of the authority so acting.

Mr. ELSTON. Why do you just say in the first line "every trial by court martial" and then in the last "an officer exercising general court-martial jurisdiction." Does the first line refer to all court-martial cases?

Mr. SMART. That is what that is intended to do, because in the case of summary and some special courts you see they will go no higher than the officer having general courts-martial jurisdiction. In others they necessarily must go all the way up. So this section restates, substantially, existing law.

Mr. ELSTON. It means every court-martial case?

Mr. SMART. That is right, but it does not mean that every court-martial record has the same type of review.

Mr. ELSTON. No; that is right.

Mr. BROOKS. Now, that means acquittals and everything?

Mr. SMART. Acquittals in the case of a general court, Mr. Chairman, are reviewed only for jurisdiction.

Mr. ELSTON. Well they can't reverse an acquittal.

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Mr. SMART. No, sir.

Mr. BROOKS. An acquittal, though, for jurisdiction would go up and be subject to a reversal?

Mr. LARKIN. That is right. If there is an acquittal and on the review it appears that the court that tried him had no jurisdiction at all over him in the first instance——

Mr. ELSTON. Well that is obvious——

Mr. LARKIN. But for no other reason.

Mr. ELSTON. Jeopardy will only arise where a man has been tried in a court that has jurisdiction.

Mr. LARKIN. Exactly.

Mr. ELSTON. If there was no jurisdiction, then he can't claim jeopardy.

Mr. LARKIN. Exactly.

Mr. BROOKS. Any further discussion on the article? If not, it stands adopted.

Article 61.

Mr. SMART (reading):

Art. 61. Same—General court-martial records:

The convening authority shall refer the record of every general court martial to his staff judge advocate or legal officer, who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction and shall be forwarded with the record to The Judge Advocate General of the armed force of which the accused is a member.

References: A. W. 35, 47 (c)

Commentary: This article is drawn principally from A. W. 47 (c). The requirement that the convening authority refer the record to his staff judge advocate or legal officer is new for the Navy. The requirement that the staff judge advocate or legal officer write an opinion on the jurisdiction of the court in cases of acquittal conforms to present Army practice. See Article 65 with reference to opinions and records in cases where there is a finding of guilty.

Mr. BROOKS. That brings up that same question of jurisdiction.

Mr. LARKIN. That is right.

Mr. BROOKS. Any further discussion on 61? If not, it stands adopted.

Article 62.

Mr. SMART (reading):

ART. 62. Reconsideration and revision.

(a) If a case before a court martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper action by a court martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned—

(1) for reconsideration of a finding of not guilty or a ruling which amounts to a finding of not guilty; or

(2) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

References: A. W. 40; proposed A. G. N., article 39 (i); M. C. M., pars. 64 (f), 83, 87 (b); N. C. & B., secs. 410, 458–468.

Commentary:

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No provision similar to subdivision (a) is found in either the A. W. or the A. G. N. Under present Army, Navy and Air Force practice, however, the convening authority has the power set out in this subdivision (see M. C. M., par. 64 (f) and N. C. & B., sec. 410.)

Subdivision (b) is based on A. W. 40. Under this subdivision the convening authority may return the record where the court has failed to prescribe a mandatory punishment or where it has found the accused guilty of a specification and not guilty of a charge and the specification sufficiently alleges a violation of some article. He may also return the record for correction of other errors, such as clerical errors.

Mr. BROOKS. In other words, under No. 2, where the court prescribed a sentence in violation of the Articles of this particular Code the correction might be made on an appeal even though it increases the amount of his sentence?

Mr. LARKIN. That is right. In other words, the first sentence would have been an illegal one in that the court did not follow the mandatory requirement of sentence. I think it occurs only in the two or three instances where the death penalty is mandatory.

If the first court did not give that mandatory sentence, then upon a rehearing the second court could give what amounts to a more severe sentence by following the mandatory provisions. Otherwise, no sentence can be increased even though it was less than is authorized.

Take the case where the maximum table of punishment says a punishment up to 20 years can be imposed. If the 20 years wasn't mandatory in the first instance and they gave 5, on the rehearing they could not give more than 5.

Mr. RIVERS. What about if they gave him manslaughter, could they increase it to murder?

Mr. SMART. No.

Mr. LARKIN. There you are talking not about the sentence but the charge itself.

Mr. BROOKS. I would like——

Mr. LARKIN. This has to do with the sentence.

Mr. PHILBIN. This relates only to the sentence?

Mr. LARKIN. That is right.

Mr. PHILBIN. How about section (a) there, what sort of a case would that be? Have they made a practice of dismissing some of these cases without prejudice so they may be revived?

Mr. LARKIN. Which section?

Mr. PHILBIN. Subsection (a) of article 62.

Mr. LARKIN. You see, there may be any number of motions throughout the course of the trial which result in a cessation of the trial.

Mr. PHILBIN. This says here "dismissed," where a case has been dismissed on motion.

Mr. LARKIN. Which motion does not go to the merits of the case and does not amount to an acquittal, for instance a motion addressed to the jurisdiction which may be sustained, or a motion invoking the statute of limitations.

Now it may well be that the law officer would grant such a motion and it turns out that he is in error, that the statute actually hasn't run. He has computed the time incorrectly. Well, now, such a motion was not to the merits of the case. It doesn't amount to——

Mr. PHILBIN. A jurisdictional question.

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Mr. LARKIN. It doesn't amount to a finding of guilty.

Mr. RIVERS. Let me ask this. Under that whole article 62, if a man is charged with murder and convicted of manslaughter and it was clear that he should have been convicted of murder, there wouldn't be any instance where it could be sent back for a sentence for murder?

Mr. SMART. The only case where that could happen——

Mr. RIVERS. That couldn't happen under this article, could it?

Mr. SMART. If he were charged with murder and found guilty of murder and the court violated the mandatory punishment——

Mr. RIVERS. I see.

Mr. SMART. The sentence.

Mr. RIVERS. Yes.

Mr. SMART. Then in that case of course it could be sent back. But where he is charged with murder but the finding is guilty as to manslaughter then the punishment cannot exceed the maximum set out in the table of maximum punishments for manslaughter and the mandatory punishment for murder goes out the window when they reduce the finding from murder to manslaughter.

Mr. RIVERS. I see.

Mr. DEGRAFFENRIED. That goes to just changing the sentence which was mandatory.

Mr. SMART. Exactly.

Mr. DEGRAFFENRIED. The verdict still stands. I knew of a case once where a man was convicted and was supposed to have been sentenced to 2 years in the penitentiary. The judge thought he had sentenced him. He went over and served 2 years in the penitentiary.

The case was appealed and neither the lawyers nor the Supreme Court caught the fact in the record that the sentence had not been formally imposed. And yet after the case went back the man filed a petition for a writ of habeas corpus and the court held and the Supreme Court affirmed it that the judge could still go back down there and change the sentence and enter it nunc pro tunc and enter the sentence he should have entered in the beginning.

Now what this does is simply give them the right to give him the sentence which was mandatory. The verdict was correct.

Mr. LARKIN. That is correct.

Mr. DEGRAFFENRIED. But in imposing the sentence they didn't follow the mandatory provisions of the law.

Mr. LARKIN. That is right. But there are so few mandatory provisions that it would only work in the mandatory death case. Where the sentences are discretionary within a maximum, the first sentence imposed binds the rehearing as to the sentence.

As to your case, Mr. Rivers, where he is charged with murder and convicted of manslaugher, that amounts to a finding of not guilty of murder, so that can't go back.

Mr. RIVERS. That is right. I just wanted the record to show that.

Mr. LARKIN. Yes, sir.

Mr. BROOKS. Now this subsection (a) is a new section, isn't it?

Mr. LARKIN. It is new in the statute, but it is adopted from present regulations.

Mr. BROOKS. Do you think it requires any further explanation?

Mr. LARKIN. I don't think so, sir.

Mr. RIVERS. The present regulations of whom?

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Mr. LARKIN. The Navy and Army. It comes from the Manual of Courts-Martial paragraph 64 (f), and from Naval Courts and Boards, section 410.

Mr. BROOKS. Any further discussion of the article? If not, it will stand approved.

Article 63.

Mr. SMART (reading):

ARTICLE 63. Rehearings.

(a) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing, in which case he shall state the reasons for disapproval. If he does not order a rehearing, he shall dismiss the charges.

(b) Every rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence shall be imposed unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory.

References: A. W. 52; N. C. & B., section 477.

Commentary: This article is adopted from A. W. 52. The Navy has no similar statutory provision. The Army term "rehearing" has been adopted to distinguish a proceeding under this Article from the new trial specified in article 73.

Subdivision (a) provides, in conformance with the usual concept of double jeopardy, that the convening authority shall not order a rehearing where the prosecution has failed to establish a prima facie case—has failed, as a matter of law, to introduce sufficient evidence to warrant the finding. The phrase "evidence in the record" is intended to authorize rehearings where the prosecution has made its case on evidence which was improperly admitted at the trial, evidence for which there may well have been an admissible substitute.

Subdivision (b) contains the limitations on the sentence which can be adjudged by a court on rehearing, with an exception for mandatory sentences. Without this exception the court on rehearing could impose no sentence at all where the original sentence was less than that made mandatory for the offenses. For a mandatory sentence see article 133.

A rehearing is a continuation of the former proceeding, and if the original court had no jurisdiction in the case, none of the restrictions of this article apply to a subsequent trial on the same charges.

Mr. BROOKS. That is all in favor of the defendant there and it also complies with the double jeopardy provisions, does it?

Mr. LARKIN. Well, as a matter of fact, (a) cuts down the standard notion of double jeopardy of the military as provided in the other section a little bit in that if the findings are disapproved because there is what amounts to a lack of a prima facie case in the first court then it can't be sent back for a rehearing. Otherwise it can.

But that is a limitation on the broader double jeopardy provision that is found in the military.

Mr. DEGRAFFENRIED. Mr. Larkin, let me ask you a question. Under that section (a) there, if the evidence was sufficient, in other words a prima facie case was made out, and it was submitted to the court and the verdict was rendered, could the convening authority under that section disturb that and call for a rehearing?

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Mr. LARKIN. Well, if he found an error of law, yes; or he did not give the credibility to a witness that the court did.

Mr. DEGRAFFENRIED. Well, the convening authority—could that be just one man?

Mr. LARKIN. That is right. That is the man who convened the court.

Mr. DEGRAFFENRIED. He is the man who has called the court together.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. And he doesn't have to be a lawyer, does he?

Mr. LARKIN. No, he doesn't.

Mr. DEGRAFFENRIED. If he was in the chain of a command and he thought, although the evidence was sufficient—if he himself thought—an error had been committed by the court he could set the whole thing aside and call for a rehearing.

Mr. LARKIN. That is right. He could set it aside for no reason. He could dismiss it, if he wanted to.

Mr. ELSTON. Don't you think this last sentence is a little confusing: "If he does not order a rehearing, he shall dismiss the charges." That might be interpreted to mean that if he doesn't order a rehearing, there has to be a dismissal of the charges and there can't be any further appeal?

Mr. LARKIN. Well, that is all to the protection of the accused. If they are dismissed, why he has nothing to complain of.

Mr. ELSTON. I know, but it looks like he has to do one of two things: Either dismiss or order a rehearing.

Mr. LARKIN. That is in the event that he disapproved. If he approves the findings or sentence or so much of them as he believes are sustainable, why of course it then proceeds further to the board of review and so forth through the appellate system. But if he disapproves them——

Mr. ELSTON. Suppose he does disapprove them we will say in part and not entirely and he feels that the upper court ought to review it rather than send it back for a retrial, under this section he couldn't do that. He would have to send it back for a rehearing.

Mr. LARKIN. I think that is right.

Mr. DEGRAFFENRIED. But he couldn't disturb a finding by the court of not guilty, could he?

Mr. LARKIN. No.

Mr. DEGRAFFENRIED. Because it says "and sentence."

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. And no sentence uses that word "sentence." He couldn't disturb the findings if there were no sentence, because it says "disapproves the findings and sentences" and there wouldn't be any sentence if he had been found not guilty.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. So he could not disturb the verdict of not guilty.

Mr. LARKIN. That is right, unless it turned out that the court had no jurisdiction in the first instance. That is the only circumstance.

Mr. BROOKS. What would you think of Mr. Elston's suggestion that we add something like the words "in such an event" before the word "if" at the beginning of the last sentence of subsection (a)?

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Mr. LARKIN. Well, the notion would be, I take it, in such event if he does not order a rehearing he shall dismiss the charges or send it on for review? Is that your notion?

Mr. ELSTON. Yes. I could conceive of the case where he does disapprove of it, but he may feel that he is not a lawyer.

Mr. LARKIN. Of course he must consult, you understand, with the staff judge advocate.

Mr. ELSTON. Even so, he might figure that it is a case that ought to be reviewed by some higher authority than himself. It seems to me he should have the alternative of letting the higher court review the case or sending it back for a rehearing.

Why send it back for another hearing and a hearing that will involve additional time and go over the same evidence again when perchance the upper court may disagree with the convening authority?

Mr. LARKIN. Of course, he can send it up, if he is in doubt, by approving it.

Mr. ELSTON. Well, he may not approve it, though. He may approve it in part, but not entirely.

Mr. LARKIN. You mean approve one specification?

Mr. ELSTON. Yes. Or he may feel that one specification has been disproven. He may disagree with the court on one specification, but he may think that six others are all right. Now under this, wouldn't he have to send it back for a rehearing?

Mr. LARKIN. Or he just dismisses the one that he disapproves of and that is the end of that one. And the rest of them go up for review.

Mr. DEGRAFFENRIED. Mr. Larkin.

Mr. LARKIN. Yes, sir.

Mr. DEGRAFFENRIED. Suppose the court had brought in a verdict where they had a period of time there that they could find a man guilty and sentence him to either 5 years or 10 or 15 years. Now it doesn't distinguish here between law and evidence.

If he thought they had given him too small a sentence and that he should under the evidence of the case get 10 years instead of 5 or 15 years instead of 5, could he send it back for a rehearing under those circumstances?

Mr. LARKIN. No, sir; he could not.

Mr. DEGRAFFENRIED. He could not.

Mr. LARKIN. No.

Mr. BROOKS. Any further discussion? If not, the article will stand approved as read.

Article 64.

Mr. SMART (reading):

ART. 64. Approval by the convening authority.

In acting on the findings and sentence of a court martial, the convening authority shall approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines should be approved. Unless he indicates otherwise, approval of the sentence shall constitute approval of the findings and sentence.

References: A. W. 47 (c), (f); A. G. N., articles 33, 54, 64 (d); proposed A. G. N., article 39 (b).

Commentary: This article substantially conforms to present practice in all the armed forces. The convening authority can approve a finding only if he finds that it conforms to the weight of the evidence and that there has been no error of law which materially prejudices

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the substantial rights of the accused. See article 59, commentary. He may approve only so much of a finding as involves a finding of guilty of a lesser included offense. See article 59. He may disapprove a finding or a sentence for any reason.

Mr. RIVERS. In other words, he has to note. Otherwise, it just goes by the board?

Mr. LARKIN. Well, by approving the sentence it includes an approval of the findings. He can't approve a sentence if he disapproved the findings. So approval of the sentence automatically means an approval of the findings.

Mr. BROOKS. Well, these articles here apply in cases where the command may use his influence in favor of the defendant in certain cases for the good of the service or for disciplinary reasons; is that right?

Mr. LARKIN. That is right. The principal one is to catch errors and to cut down the sentence. He can't increase the sentence. He can't send back not guilty findings and so forth.

Mr. BROOKS. Yes.

Mr. LARKIN. But it provides an immediate review right in the field. And this follows present practice in all services.

Mr. RIVERS. Now, does that mean that all he has to write on there is approved or disapproved?

Mr. LARKIN. That is right. He can approve all or so much of it as he wants to or disapprove some of it or all.

Mr. RIVERS. Just say approved or disapproved.

Mr. LARKIN. That is right.

Mr. ELSTON. Where is there anything in here that authorizes him to disapprove for example, a sentence and then impose a later sentence?

Mr. LARKIN. I think 64 that we just covered covers that. He shall "approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct."

Anything he finds incorrect——

Mr. ELSTON. Well, now, let us take the case where the court had the right to, we will say, give a sentence of 10 years, but that he in his judgment thought the sentence ought to be only 1 year. Now the court was correct in law in imposing a 10-year sentence.

He just disagrees with the court on the amount of the sentence. Now I don't see anything in this section that gives him a right to remit a part of the sentence.

Mr. LARKIN. Well, I think the language "and determines should be approved" is a determination that he can make for any reason.

Mr. ELSTON. I don't think that is what it says, though.

Mr. BROOKS. Well, would that come under the word "fact," there, because that reads "as he finds correct in law and fact."

Mr. ELSTON. Well, the point I am making, Mr. Chairman, is, it would be correct in law and it would be correct in fact. It is a matter of judgment.

Mr. LARKIN. That is right.

Mr. ELSTON. The court may have been correct in law and they may have been correct in fact, but it is a matter of judgment. They thought the man ought to have 10 years. The convening authority thinks he ought to only have 1 year. Now this sentence doesn't give him the right to remit a part of the sentence as I interpret it.

Mr. LARKIN. Well, that language "and determines should be approved" was intended to give him a free hand in doing anything he

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wants for any reason in cutting down the sentence or in disapproving. "As he finds correct in law and fact" is a guide to him that he at least can't approve anything which he finds is not correct in law and fact. At least he is bound by that.

If he finds it incorrect in law or in fact, either the findings or the sentence, then he should disapprove it. He can only approve at least what he finds correct and only as much as he determines he wants to.

Mr. ELSTON. I think you are putting an interpretation on it that isn't written there.

Mr. DEGRAFFENRIED. Your interpretation is that he can reduce it if it is correct in law, but he can't increase it.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. Do you think it is clear in there, Mr. Larkin?

Mr. ELSTON. You make it clear in the previous section, that he can't increase it, but you don't make it clear here that he can decrease it.

Mr. LARKIN. Perhaps we can——

Mr. BROOKS. Furthermore, I think your commentary goes far beyond that article because in the last sentence of your commentary you say "he may disapprove a finding or a sentence for any reason."

Mr. LARKIN. That is right. That is the intention.

Mr. BROOKS. Which means that he can just disapprove it.

Mr. LARKIN. That is right.

Mr. BROOKS. He doesn't have to read the record or anything else. He can just say disapproved and it is through.

Mr. LARKIN. That is right. In the normal course of the review of the case he looks to its legality and the establishment of the facts and the appropriateness of the sentence and he shouldn't approve anything that is wrong or illegal, but he can disapprove it if it is illegal, if it is wrong, and for any other reason.

Mr. BROOKS. Or for no reason at all?

Mr. LARKIN. Or for no reason at all.

Mr. RIVERS. That is right.

Mr. LARKIN. The classic case that I think General Eisenhower stated in his testimony before your subcommittee last year was that even though you might have a case where a man is convicted and it is a legal conviction and it is sustainable, that man may have such a unique value and may be of such importance in a certain circumstance in a war area that the commanding officer may say "Well he did it all right and they proved it all right, but I need him and I want him and I am just going to bust this case because I want to send him on this special mission."

He has the right to do that. It is that free rein—all of which operates to the advantage of the accused——

Mr. ELSTON. Doesn't this last sentence more or less refer to a case that is going on to the upper court, up to the board of review? In other words, when the board of review gets the case the board of review would understand that since he didn't express any disapproval of the sentence it is presumed that he approved of the sentence?

Mr. LARKIN. No. I think that because he has approved of the sentence it is presumed that he has approved of the finding of guilty.

Mr. ELSTON. Well, I think we ought to clearly indicate that he has a right to remit a part of the sentence.

Mr. BROOKS. Mr. Smart has something he wants to say in that respect.

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Mr. SMART. Well, in old article of war 51 you have words to this effect:

The power of the President, the Secretary of the Department of the Army, and any reviewing authority to order the execution of a sentence of a courts martial shall include the power to mitigate, remit or suspend the whole or any part thereof, except that a death sentence may not be suspended.

Now this particular article here brings up a phase of command control that operates to the benefit of the accused.

I well remember General Collins' testimony before the committee 2 years ago when he talked about his authority, as of that time, to empty the whole guardhouse if he wanted to. He had a bunch of people out there who had been convicted. They were getting ready to go to combat and he wanted to give them a chance to work themselves out from under a serious conviction.

He suspended their sentences and let them all go back to combat. If they made good he remitted the entire sentence. Now this permits the convening authority to do the very same thing. That is the intent. As to the appropriateness of the language used, I am not in position to say one way or the other. But that is the intent of it and it works for the benefit of the accused.

Mr. ELSTON. Yes. Certainly the language you read is clear. There is no doubt about that language.

Mr. BROOKS. Well, is it possible to make a change in that article so as to make it very clear?

Mr. LARKIN. I think so. I think Mr. Smart and I can work out something where after the words "law and fact" we could say in addition—

the convening authority may for any or for no reason disapprove a finding or reduce a sentence in whole or in part—

Or something like that.

Mr. ELSTON. Yes.

Mr. LARKIN. It is the same idea. If we can express it more clearly and make it sure, there is no reason why we should not. Let us try.

Mr. BROOKS. Is it all right, then, to authorize Mr. Smart and Mr. Larkin to fashion that wording and bring it in in the morning?

Mr. LARKIN. We will bring it back when we have these eight or nine other things to discuss.

Mr. BROOKS. If there is no further discussion, then, on article 64, we will approve it with the reservation we have made.

Article 65.

Mr. SMART (reading):

ART. 65. Disposition of records after review by the convening authority.

(a) When the convening authority has taken final action in a general court-martial case, he shall forward the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General.

(b) Where the sentence of a special court martial as approved by the convening authority includes a bad conduct discharge, whether or not suspended, the record shall be forwarded to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by general court martial or directly to the appropriate Judge Advocate General to be reviewed by a board of review. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad conduct discharge, whether or not suspended, the record shall be forwarded to the appropriate Judge Advocate General to be reviewed by a board of review.

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(c) All other special and summary court-martial records shall be reviewed by a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or Treasury Department, and shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations.

References: A. W. 35, 36; proposed A. G. N., articles 21, 39 (d), 39 (e).

Commentary: Subdivision (a) incorporates present Army practice. Navy practice is similar except that no opinion by the legal officer is required.

Subdivision (b) is derived from A. W. 36 except that the record may be sent directly to the Judge Advocate General. This alternative is permitted in order to provide for situations where no judge advocate or law specialist is assigned to the staff of the officer exercising general court-martial jurisdiction or where direct transmittal to the Judge Advocate General or a branch office would be more expeditious. Proposed A. G. N., article 39 (d) is similar to A. W. 36.

Subdivision (c) permits the review of other special and summary courts martial to be prescribed by regulations, subject to the requirement that all such records shall be reviewed by a law specialist or judge advocate, or lawyer in a Coast Guard case. The reason for this provision is that the volume of cases, the availability of law specialists and judge advocates, and the feasibility of reviewing records in the field may differ in the various armed forces.

The disposal of special and summary court-martial records is also left to regulation, because of the varying needs of the armed forces. It is intended, however, that such records shall be retained until no longer of use either to the armed force concerned or to the accused.

Mr. BROOKS. Any discussion on article 65?

Mr. RIVERS. That means that any lawyer in the Treasury Department, whether he be a tax man or not, could O. K. or review it?

Mr. SMART. Technically speaking, I guess you would be right, but that certainly is not the intent of it, Mr. Rivers. The general counsel, I am sure, is the individual intended.

Mr. RIVERS. It says any lawyer.

Mr. BROOKS. Well, of course, that review is all in favor of the defendant.

Mr. LARKIN. Well, that section (c) has to do with special courts martial in which there is no B. C. D. imposed.

Mr. RIVERS. I see.

Mr. LARKIN. Or the next lower court—the summary courts martial.

Mr. RIVERS. Yes.

Mr. LARKIN. And it is left, of course, to the Secretary of the Treasury in peacetime as far as the Coast Guard is concerned to designate the appropriate lawyer and I am quite sure that you can be confident that he will designate the chief counsel.

Mr. BROOKS. Any further discussion? Any objection to the article? If not, we will approve it.

Article 66.

Mr. SMART (reading):

ART. 66. Review by the board of review.

(a) The Judge Advocate General of each of the armed forces shall constitute in his office one or more boards of review, each composed of not less than three officers or civilians, each of whom shall be a member of the bar of a Federal court or of the highest court of a State of the United States.

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(b) The Judge Advocate General shall refer to a board of review the record in every case of trial by court martial in which the sentence, as approved, affects a general or flag officer or extends to death, dismissal of an officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for more than 1 year.

(c) In a case referred to it, the board of review shall act only with respect to the findings and sentence as approved by the convening authority. It shall affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record it shall have authority to weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the board of review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. Otherwise it shall order that the charges be dismissed.

(e) Within 10 days after any decision by a board of review, the Judge Advocate General may refer the case for reconsideration to the same or another board of review.

(f) Otherwise, the Judge Advocate General shall, unless there is to be further action by the President or the Secretary of the Department or the Judicial Council, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) The Judge Advocates General of the armed forces shall prescribe uniform rules of procedure for proceedings in and before boards of review and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the Offices of the Judge Advocates General and by the boards of review.

References: A. W. 50 (a), (d), (e), (g); 51, 52; proposed A. G. N., article 39 (e), (f).

Commentary: This article adopts the Army system of review by a formally constituted board. Required qualifications of the members are new, however, and a provision permitting civilian members has been added for the Coast Guard. (See subdiv. (a).)

Review of all the cases specified in subdivision (b) is automatic, whether or not the sentence is suspended. The types of cases receiving automatic review by the board are substantially the same as those under the present Articles of War except that for sentences involving penitentiary confinement there have been substituted sentences involving confinement for more than 1 year. This conforms to changes in the system of confinement in article 58. For review of other cases by a board of review see article 69.

The board of review shall affirm a finding of guilty of an offense or a lesser included offense (see art. 59) if it determines that the finding conforms to the weight of the evidence and that there has been no error of law which materially prejudices the substantial rights of the accused. (See art. 59, Commentary.) The board may set aside, on the basis of the record, any part of a sentence, either because it is illegal or because it is inappropriate. It is contemplated that this power will be exercised to establish uniformity of sentences throughout the armed forces. (See art. 67 (g).)

Subdivision (d) deals with the power to order a rehearing. (See article 63).

Mr. BROOKS. Any discussion on this article? I notice in my records here that subsection (b) was the one as to which Colonel Melvin Maas recommended some sort of saving clause. Mr. Smart, do you remember just what he had in mind there?

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Mr. LARKIN. I thought, Mr. Chairman, in that connection he objected or some witness objected to the mandatory review for general or flag officers.

Mr. BROOKS. I think his idea, if I recall it, was that you singled out general or flag officers.

Mr. LARKIN. Yes.

Mr. BROOKS. While it didn't cover others.

Mr. LARKIN. That is right, but it doesn't apply here because in the article providing for the Judicial Council there is an automatic review of the case of a general or flag officer where there is not of these other types.

Since they all are automatically and mandatorily reviewed here, why I don't think the criticism applies if it is a good criticism in any case. But I don't think it applies here. I don't know what criticism you are referring to in the absence of that.

Mr. SMART. I think that that is correct, Mr. Larkin. He was referring to: Why didn't you specifically mention other officers, other than flag rank or general officers?

Mr. LARKIN. Yes.

Mr. SMART. And why didn't you talk about enlisted men, too?

Mr. LARKIN. Yes.

Mr. SMART. That was his complaint.

Mr. BROOKS. Well, what is your answer to that?

Mr. LARKIN. Well, this provides an automatic review before the board of review of the character spelled out here, as to facts and law, for general or flag officers no matter what offense they are convicted of and no matter how minor and for everyone else, including general or flag officers, in the event that the finding is death, dismissal, dishonorable discharge, bad conduct discharge, or confinement for over a year.

The only thing in addition that this does for a general or flag officer is that it gives a mandatory review of the case even though the sentence is not death, dismissal, or confinement.

Mr. RIVERS. That air officer who is under investigation now over in Britain I think—General Bissell—would be one under this article. Of course, he is under preinvestigation now.

Mr. LARKIN. That is right.

Mr. RIVERS. Now, what is he being charged under, the Elston bill?

Mr. LARKIN. I don't know. I don't know that the charge has been formulated as yet, Mr. Rivers.

Mr. RIVERS. He is being investigated under something.

Mr. SMART. It apparently is a charge under the ninety-sixth article of war.

Mr. DEGRAFFENRIED. Conduct unbecoming an officer and a gentleman, or something of that kind.

Mr. LARKIN. I don't know. I haven't heard.

Mr. BROOKS. Now, for instance, in the event of a case paralleling that of a man with the same rank, his case would first go through the trial court, of course, and then the convening officer.

Mr. LARKIN. Yes, sir.

Mr. BROOKS. And then would come here to this review.

Mr. LARKIN. As would every other case that includes a sentence of death, dismissal, dishonorable discharge, bad-conduct discharge, or confinement for more than a year.

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Mr. BROOKS. But now if that were an enlisted man, it would not follow that same procedure, would it?

Mr. LARKIN. Yes, sir; if the sentence on the enlisted man was either death, dishonorable discharge, and so on.

Mr. BROOKS. Say the sentence was lesser than that.

Mr. LARKIN. That is right, then it would not.

Mr. BROOKS. It would not.

Mr. LARKIN. That is right.

Mr. BROOKS. You heard the explanation, gentlemen. Any objection?

Mr. ELSTON. I would like to ask a question on some other parts of this article.

Mr. BROOKS. Go ahead.

Mr. ELSTON. This is the first time you have permitted civilians to serve on boards of review, isn't it?

Mr. LARKIN. That is right.

Mr. ELSTON. Now, why were they included?

Mr. LARKIN. Well, they were included initially at the request of the Coast Guard—not that it be worded this specific way but the Coast Guard does have civilian lawyers working in their court-martial procedures during peacetime, and they feel they are very competent.

They don't have an unusually large number of officers in their review, and they wanted to be free if they desired to appoint a civilian lawyer working for the Coast Guard to a board of review. This was the easiest way to make that provision. Of course, it is not mandatory that civilians sit on a board of review.

It is up to the Judge Advocate General because he appoints the members of the board of review and they would sit on them only in the event he desired it.

Now the Navy said that they might find that useful. They have in the past had several civilian lawyers who were working in their office for a number of years and who were extremely competent.

The Navy does not of course now have a statutory board of review of this character. This is patterned after the board of review in the Army review system. But of course, as written here, it applies to the Navy and will require them to have one.

Mr. ELSTON. Now I notice in article 62 permission is granted the convening authority to remand the case for the correction of an apparent error in the record or omission in the record. But that same authority is not granted here. Was there any reason for omitting it?

Mr. LARKIN. Well, it was felt I think that if the board of review found such a record after it had been screened by the convening authority, since they are an appellate tribunal, it is not necessary to give it to them and all they would have to do is send it back to the convening authority and ask him to have it corrected.

Mr. ELSTON. I notice that you have provided here that the sentences of more than a year are to be reviewed. Why is that not a year or more? That is subsection (b).

Mr. LARKIN. I see it.

Mr. BROOKS. May I offer this thought——

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Mr. LARKIN. I don't know that there is any reason. Colonel Dinsmore suggested that felony is construed in many jurisdictions as a year and a day, but I don't think it is uniform by any means.

I am frank to say I don't know that there is any reason why it couldn't be a year or more.

Mr. ELSTON. It seems to me it ought to be because a great many sentences are for a year.

Mr. LARKIN. Yes.

Mr. ELSTON. There is not much difference between a year and a year and a day. The reason for the year and a day in the Federal courts is because I believe the law is that you can't confine a man in a penitentiary unless he is sentenced for more than a year.

Mr. LARKIN. Yes.

Mr. ELSTON. That is why judges make it a year and a day.

Mr. LARKIN. In some States, however, I know—New York particularly—a year's sentence makes it a felony if not otherwise stated.

Mr. ELSTON. Yes.

Mr. LARKIN. And it doesn't have to be a year and a day.

Mr. ELSTON. It is in a great many States.

Mr. LARKIN. Yes.

Mr. DEGRAFFENRIED. In some jurisdictions, though, you can give a man 12 months' hard labor and it would be under a misdemeanor or statute, whereas if it prescribes a year in a penitentiary it is a felony.

Mr. LARKIN. Yes.

Mr. BROOKS. Isn't that the old common law, that where you want to make it a felony you prescribe a year and a day?

Mr. LARKIN. I think so.

Mr. BROOKS. And that takes you to the penitentiary instead of the jail.

Mr. LARKIN. Yes.

Mr. ELSTON. Well the rule with respect to what is a felony as I understand it is that the place to which he is sentenced determines it. He may be sentenced to a penitentiary or a reformatory if it is a felony. Anything less than that is a misdemeanor.

Mr. BROOKS. Mr. Smart, do you have an idea on that?

Mr. SMART. I think the most important thing to keep in mind here is the fact that your subordinate court is limited to a 6-month penalty, so that your special court is in no event able to confine for more than 6 months. So any sentence of 1 year is in every instance given by a general court martial.

I don't think we should cling too closely to the civil interpretation as to what constitutes a felony as against a misdemeanor. I think we should better consider the jurisdictions of the court here. I strongly feel that general courts are not giving sentences of a year and a day. They cling to perhaps an even number of months. And I have the personal feeling that this should say 1 year or more.

Mr. ELSTON. I move, Mr Chairman, that we make that change.

Mr. PHILBIN. That is right.

Mr. BROOKS. You heard the motion—change. Will you state your motion, again?

Mr. ELSTON. The motion is to amend subsection (b) on line 8, by striking out the words "more than one" and making it read "for a year or more."

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Mr. BROOKS. You heard the motion. Any objection to it? If not, it is adopted.

Mr. ELSTON. Now, Mr. Chairman, there is one other question that I think was raised by some of the witnesses who testified before us and that was with respect to subsection (e), where the Judge Advocate General is given authority to refer a case for reconsideration to the same or another board of review. The argument was made that there wasn't any finality about it.

If the Judge Advocate General wasn't satisfied with the decision of the board of review he could just send it to another board and it would give him too much authority. There ought to be something final about the action of a board of review. As long as he is not satisfied he sends it to another board.

So actually he is the one who is practically dictating what ought to be done by the board of review.

Mr. LARKIN. I recall that criticism, Mr. Elston. The idea here substantially was this: The board of review's judgment is not necessarily final, for two reasons. The first is that the judge advocate can if he is dissatisfied with its decision send it to the Judicial Council—and not on petition—as a matter of right for future review or the accused himself may petition the Judicial Council for further review on questions of law.

Now, the board of reviews as provided—and there probably will be several, perhaps more than that because the Army I believe at the present time has four and during the war they had a larger number—continues jurisdiction as provided in your bill over facts as well as law.

Now, there may be a case or there may be cases in which the board of review will reverse not on a question of law but on a construction of the facts or on their idea of the credibility of a witness that is different from the credibility that the court gave that witness.

On that basis the Judge Advocate General who might disagree could not send that question to the Judicial Council since it is a question of fact, and it may be a case of such importance that he would like another group, say another group of his own, to review the facts.

If, of course, he were to send a case to the board of review because he disagreed with their findings on the law and you got a different decision from another board of review, I should say that is a perfect case on the law for the Judicial Council. If two boards of review differ on the law, why it certainly needs settling some place.

But if they disagree or he disagrees with a board of review on the facts, why there is no other place for it to go except another board, and it may well be such an extremely important case that he would like to have another opinion as to the construction of the facts, the credibility of the witnesses, or the settling of controverted questions of fact. Now, it was on that basis, rather than on another——

Mr. ELSTON. Well, I am not objecting to it at all. I think it perhaps gives the accused the same opportunity for review that the prosecution would have. It is just perhaps another safeguard for the accused. It might give him another hearing.

Mr. LARKIN. Yes.

Mr. ELSTON. But the question was raised and there was objection by some witnesses so I thought we ought to at least consider it.

Mr. LARKIN. I understand.

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Mr. BROOKS. Colonel, do you want to say something?

Colonel DINSMORE. Mr. Chairman, I am glad Mr. Elston raised that point. He stated that correctly. I think the criticism was raised on the assumption that this was a disadvantage to the accused, whereas often enough it is decidedly to his advantage.

In a recent case the board of review held that the story of the defense which the accused presented was incredible. The Judge Advocate General wasn't satisfied. He did not send the case to another board of review. He sent it to the Judicial Council because it is the kind of case he could send to the council.

The council held the same way. The Judge Advocate General still was not satisfied and referred the case to two of his more experienced assistants. Of course that was not a statutory reference. It was for his own personal advice. They took a different view from the board and the council.

So I merely want to point out that it works at least both ways and often enough in favor of the accused.

Mr. DEGRAFFENRIED. But in that particular case there were two men that were working right there in his office who decided that the board of review was wrong and the Judicial Council was wrong and they really decide the thing?

Colonel DINSMORE. Well, they didn't, Mr. deGraffenried, because the case, of course, had to go to the Secretary. But the Judge Advocate General had the benefit of their advice, just like I might come to you and say "What do you think?" It wouldn't have any official standing.

Mr. DEGRAFFENRIED. They really didn't decide it.

Colonel DINSMORE. No.

Mr. DEGRAFFENRIED. They just made suggestions.

Colonel DINSMORE. Yes.

Mr. BROOKS. Colonel, this won't apply in the case where the first board of review finds that an error had been committed and the man was not guilty. In that instance there would be no second board of review, would there?

Colonel DINSMORE. I disagree, Mr. Chairman. I think you could send it.

Mr. BROOKS. How would that be to the advantage of the accused?

Colonel DINSMORE. That would not. I don't say it is always to the advantage of the accused. I merely want to point out it works out both ways.

Mr. BROOKS. It can be either to the advantage or the disadvantage?

Colonel DINSMORE. That is correct.

Mr. LARKIN. The Government should have an advantage sometimes, too. I mean it should be an equal basis, with both having the advantage.

Mr. ELSTON. Especially after you get into the higher courts of appeal.

Mr. LARKIN. Exactly.

Mr. SMART. It has been my understanding—and I stand to be corrected by the Judge Advocate General of the Navy, Admiral Russell—I have discussed this particular article with him and his particular feeling is that it would result in a benefit to the accused.

Where the board of review had affirmed a sentence which he felt was entirely too much, in the interest of the accused he felt he ought

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to be able to refer it to another board of review and let them see if they wouldn't knock that sentence down in some degree.

Now, of course as you have pointed out, let us assume that the board of review would not agree with the findings and sentence and might very well reverse them. In that event he could take that case under the present wording of this section (c) and refer it to another board of review.

Mr. BROOKS. Well, what occurs to my mind is this: Suppose they would hold that actually there was no basis for conviction and the man was innocent. Now, does that then amount to a double jeopardy when you turn that over to another board?

Mr. SMART. It is not jeopardy, sir, because this is not trial procedure. This is appellate procedure.

Mr. LARKIN. Well, under the jeopardy provision, you recall, jeopardy does not attach until the finding of guilty is final.

Mr. BROOKS. It seems to me it is very close to double jeopardy, when one tribunal finds a man to be innocent and then turn him over to another one for hearing.

Mr. DEGRAFFENRIED. Suppose the board of review would say the evidence was insufficient to sustain a verdict of guilty and order him discharged, that would be tantamount to a verdict of not guilty. Sometimes they send it back for a new trial if there are errors of law.

Mr. Larkin. That is right.

Mr. DEGRAFFENRIED. But sometimes the appellate court holds from the record that the evidence is not sufficient, and they don't order it back for a retrial.

Mr. LARKIN. But the Judge Advocate General has the right in that case to send it forward to the Judicial Council to determine the question finally and once and for all.

Mr. ELSTON. Well, isn't it true, too, in the civil courts that if you get into the court of appeals and the court of appeals decides in favor of the accused and orders a retrial of the case?

Mr. LARKIN. Yes.

Mr. ELSTON. Or even orders the dismissal of the accused?

Mr. LARKIN. Yes.

Mr. ELSTON. The State can appeal.

Mr. LARKIN. That is right.

Mr. ELSTON. From a decision of the court of appeals.

Mr. LARKIN. Exactly so.

Mr. ELSTON. The Supreme Court may reverse the court of appeals.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. But it is still in a court, Mr. Larkin, isn't it?

Mr. LARKIN. Sir?

Mr. DEGRAFFENRIED. In the civil court, if you were to appeal from a decision of the United States circuit court of appeals it would go to the United States Supreme Court.

Mr. LARKIN. Yes.

Mr. DEGRAFFENRIED. It would still be in a court.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. Under this method here, the way they have it worked out here, it doesn't go to another tribunal. It goes to the judge advocate or goes to the Secretary. Was that what I understood?

Mr. LARKIN. No. It may thereafter upon request of the judge advocate or upon petition of the accused go to the Judicial Council, as we will see in the next article.

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Mr. DEGRAFFENRIED. I see.

Mr. ELSTON. Of course, it is susceptible of abuse. There is no doubt about that. But on the other hand, it can work to the advantage of the accused.

Mr. LARKIN. That is right. And as I say, if you had two boards of review that differed on questions of law, why there is a perfect petition to your Judicial Council.

Mr. BROOKS. If you have a case, though, where a board of review should find a man not guilty and want to release him, and the command steps in and says, "We will send it to another board of review," and they find the same thing, he can send it to another one and keep on until he gets a conviction.

Mr. LARKIN. Yes. But on that basis, unless it was only on questions of fact, the accused still has the right to petition the final tribunal, which is the Judicial Council.

Mr. BROOKS. He has the right to petition, but he doesn't have the right to appeal in all cases.

Mr. LARKIN. Unless they entertain it.

Mr. BROOKS. Does he?

Mr. LARKIN. No; that is right.

Mr. BROOKS. Therefore, this is the final appeal for some of these cases. And a commanding officer, if he wants to get a conviction, can sit by and keep on until he does get one.

Mr. LARKIN. Well, you are talking about the judge advocate and not the commanding officer?

Mr. BROOKS. Well, he is the commanding officer in this instance, though, isn't he?

Mr. LARKIN. That is right.

Mr. BROOKS. The judge advocate.

Mr. LARKIN. He is——

Mr. BROOKS. He can go on until he does get a conviction, or by the same token an acquittal. Whenever he decides what he wants, he is going to get it.

Mr. LARKIN. If it was on the facts that is possibly true, but on the law it still goes to the Judicial Council.

Mr. ELSTON. Mr. Chairman, wouldn't it be well to put in a slight amendment to prevent more than one reconsideration by adding the word "one" so that the Judge Advocate General may refer the case for one reconsideration, which reference may be to the same or to another board of review, so that you couldn't have just one review after another.

Mr. LARKIN. Well, that might do it.

Mr. ELSTON. I offer that amendment, Mr. Chairman.

Colonel DINSMORE. Mr. Chairman, I would like to make my position clear.

Mr. BROOKS. All right, Colonel.

Colonel DINSMORE. I was merely pointing out the effect of this language. I don't want to be understood as taking any position as to what the committee ought to do about this one way or the other.

Mr. BROOKS. Well, thank you very much, Colonel.

I feel since they are passing also on the facts that you may run into this: Here is a board of review that hasn't seen the witnesses and will find as to those facts one way and you keep on until you do get a

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finding on the facts just like you want the board of review to find. It is a weakness, it seems to me, in this appellate set-up.

You have heard the amendment offered by Mr. Elston. All in favor say, "Aye." All opposed, "No." The "Ayes" seem to have it. The amendment is adopted, to add the word "one" in——

Mr. ELSTON. Line 2, on page 54, after the word "for".

Mr. BROOKS. Any further discussion? If not——

Commander WEBB. Mr. Chairman, the Treasury Department would like to emphasize the point that Mr. Larkin made. It was at the instigation of the Department that the exception was made for the Coast Guard to have civilians sit on the board of review.

But we would like to make it very clear that the Treasury Department is in no way advocating civilians for any other armed force except the Coast Guard and the request was made in the nature of an exception for the service because of existing practice.

Mr. BROOKS. Fine. We thank you very much.

Any further discussion? If not, the article is adopted.

Article 67.

Mr. SMART. Mr. Chairman, this is a difficult section. There are a great many charts and things over here which should be displayed. I don't know whether the committee wants to launch itself into 67 in view of the fact that we will have to recess in 10 minutes. What is your pleasure?

Mr. BROOKS. Is it possible to bypass that and take up 68 and then go back to 67?

Mr. SMART. Yes; I think that 68 and 69 and these other articles are all relatively easy to consider.

Mr. BROOKS. If there is no objection, we will bypass 67 until tomorrow morning and take up 68.

Mr. SMART (reading):

ART. 68. Branch offices.

(a) Whenever the President deems such action necessary, he may direct The Judge Advocate General to establish a branch office, under an Assistant Judge Advocate General, with any distant command, and to establish in such branch office one or more boards of review. Such Assistant Judge Advocate General and any such board of review shall be empowered to perform for that command, under the general supervision of The Judge Advocate General, the duties which The Judge Advocate General and a board of review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval by the President.

(b) In time of emergency, the President may direct that one or more temporary Judicial Councils be established for the period of the emergency, each of which shall be under the general supervision of the Judicial Council.

References: A. W. 50 (c).

Commentary: Subdivision (a) incorporates A. W. 50 (c) with modifications to conform to the review under this code. The AGN contains no similar provision, but the Navy feels that it would be useful in times of emergency.

Subdivision (b) provides for expansion of the Judicial Council in time of emergency. Such temporary Judicial Councils are placed under the supervision of the permanent Judicial Council for the purpose of uniformity.

Mr. BROOKS. You have heard that article. Any discussion on it? If not, it stands adopted.

Article 69.

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Mr. SMART (reading):

ART. 69. Review in the office of The Judge Advocate General.

Every record of trial by general court martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by Article 66, shall be examined in the Office of the Judge Advocate General. If any part of the findings or sentence is found unsupported in law, or if The Judge Advocate General so directs, the record shall be reviewed by a Board of Review in accordance with Article 66, but in such event there will be no further review by the Judicial Council.

References: A. W. 50 (f); proposed A. G. N., article 39 (e).

Commentary: This article conforms to A. W. 50 (f). Since these cases involve minor sentences, no review by the Judicial Council is felt to be appropriate.

Mr. BROOKS. You have heard the reading of that article. Any discussion on it? Any objection?

Mr. ELSTON. Hold it just a second.

Mr. BROOKS. Yes.

Mr. SMART. I think perhaps it would be well to just give an example or two for the record to show what types of cases are anticipated under that article.

Mr. BROOKS. All right, sir.

Mr. SMART. Will you offer that, Mr. Larkin?

Mr. LARKIN. Well, this contemplates the review for general courts in which there is not imposed as part of the sentence either a dishonorable discharge, a bad-conduct discharge, or there is a sentence of less than a year.

Mr. ELSTON. In other words, they can bring within the purview of article 66 cases which are not specifically referred to there.

Mr. LARKIN. That is right.

Mr. ELSTON. If the Judge Advocate General after examination of the record feels that they ought to be given review by the board of review?

Mr. LARKIN. That is right, Mr. Elston. But it is not provided that there is a mandatory review by the board of review in these lesser sentences.

Mr. BROOKS. If there is no objection to the article, we will pass on to 70.

Mr. SMART (reading):

ART. 70. Appellate Counsel.

(a) The Judge Advocate General shall appoint in his office one or more officers as Appellate Government Counsel, and one or more officers as Appellate Defense Counsel.

(b) It shall be the duty of Appellate Government counsel to represent the United States before the board of review or the Judicial Council when directed to do so by the Judge Advocate General.

(c) It shall be the duty of Appellate Defense counsel to represent the accused before the Board of Review or the Judicial Council—

(1) when he is requested to do so by the accused; or

(2) when the United States is represented by counsel; or

(3) when The Judge Advocate General has requested the reconsideration of a case before the board of review or has transmitted it to the Judicial Council.

(d) The accused shall have the right to be represented before the Judicial Council or the Board of Review by civilian counsel if provided by him.

(e) The Appellate Counsel shall also perform such other functions in connection with the review of court-martial cases as The Judge Advocate General shall direct.

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References: None.

Commentary: This article is new and is included in the code in order that the accused may be represented on review. Such representation will assure that the accused's case will be thoroughly considered. Appellate counsel should have the qualifications of counsel before a general court martial. See article 27 (b).

I make only one point insofar as this article is concerned, Mr. Chairman, and that is that there are no qualifications prescribed for appellate counsel.

Mr. BROOKS. Anyone that is appointed can appear, is that it?

Mr. LARKIN. That is right, Mr. Chairman. We spelled out in our commentary, though, that they should have the qualifications, we thought they should have the qualifications, that are provided for trial counsel in the general courts under article 27 (b).

Mr. ELSTON. Why wouldn't it be well to say having the qualifications prescribed in section——

Mr. SMART. In article 27.

Mr. LARKIN. I think that would certainly make it clear.

Mr. PHILBIN. Yes.

Mr. LARKIN. This whole article is new. But in setting up this appellate system we felt it worth while and advisable that in appropriate cases there be representation and argument, rather than just a generalized reading of records, so that issues and contentions can be argued before these appellate tribunals.

Mr. ELSTON. Well, I would move, Mr. Chairman, that we amend the section by providing that counsel referred to in this section shall have the qualifications required in section——

Mr. SMART. Article 27 (b) (1).

Mr. ELSTON. Allowing Mr. Smart to draft the amendment and put it in the appropriate place.

Mr. SMART. You will recall, Mr. Chairman, that it was agreed when the committee concluded with the remaining sections Mr. Larkin and I would prepare an amendment for 27 (b) (1).

Mr. LARKIN. That is right.

Mr. SMART. Once that is done, this will refer back to that and will close that loophole.

Mr. BROOKS. Yes.

What would you think of this, under subsection (d), which reads "the accused shall have the right to be represented by Judicial Council or the board of review by civilian counsel if provided by him"—shouldn't we add the word "also" in there or begin by saying "in addition the accused shall have the right"?

Mr. LARKIN. I think it is clear this way, Mr. Chairman.

Mr. BROOKS. But you have stated above that the Judge Advocate General may appoint someone to represent the accused.

Mr. LARKIN. That is right. That follows the notion that you have in the trial where the convening authority appoints someone to represent the accused.

Mr. BROOKS. Then in (d) you say "the accused shall have the right."

Mr. LARKIN. That follows the same pattern. When a man goes to trial the convening authority appoints a counsel for him or he appoints a military counsel that he requests if he is available or the accused may have his own civilian counsel.

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Mr. BROOKS. So that that——

Mr. LARKIN. This follows the same pattern here. Here he may have his own counsel if he desires.

Mr. BROOKS. Do you really read into subsection (d) the word "also"?

Mr. LARKIN. I think so, yes.

Mr. BROOKS. All right.

You have heard article 70 as read. Is there any further discussion or objection? If not, it stands approved.

Article 71.

Mr. SMART. [reading]:

ART. 71. Execution of sentence; suspension of sentence.

(a) No court-martial sentence extending to death or involving a general or flag officer shall be executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except a death sentence.

(b) No sentence extending to the dismissal of an officer, cadet, or midshipman shall be executed until approved by the Secretary of the Department, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person who is so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c) No sentence which includes, unsuspended, a dishonorable, or bad conduct discharge, or confinement for more than one year shall be executed until affirmed by a board of review and, in cases reviewed by it, the Judicial Council.

(d) All other court-martial sentences, unless suspended, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.

References: A. W. 44, 47 (d), 48 (a), 48 (c), 49, 50 (e); proposed A. G. N., Article 39 (a), 39 (c).

Commentary: Subdivision (a) is derived from A. W. 48 (a). Proposed A. G. N., Article 39 (a) is similar except that sentence involving a flag officer are treated in the same manner as sentences involving other officers. The words "as he sees fit" are intended to give the President absolute discretion in determining the amount of the sentence to be approved by him.

Subdivision (b) is derived from A. W. 48 (c) and A. W. 44. Proposed A. G. N., article 39 (a) requires a dismissal to be confirmed by the President, or by the Secretary when empowered by the President. It is felt appropriate, however, to place this power initially in the Secretary of the Department and to allow delegation of this power in order to provide for periods of expansion of the armed forces. It was felt more appropriate to place the power to change a dismissal to reduction to ranks in the Secretary rather than in a court martial as provided in A. W. 44.

Subdivision (c) is derived from A. W. 48 (c) and A. W. 50 (e). Sentences required to be affirmed by a board of review may not be ordered executed until such review and any further review by the Judicial Council under article 67 is completed. Thus, such sentences may be ordered executed 30 days after the accused has been notified of the decision of the board of review if he has not petitioned the Judicial Council for review within that period.

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Subdivision (d) is derived from A. W. 47 (d). The proposed AGN would require execution of sentences not extending to punishments specified in subdivisions (a), (b), and (c) to be executed upon announcement by the court. It is felt appropriate, however, to require review by the convening authority before ordering execution of any sentence. The convening authority is given power to suspend sentences other than death sentences. See article 74 as to the power of other officers to suspend sentences.

Mr. ELSTON. Why do they provide that they can't suspend a death sentence?

Mr. LARKIN. Well, I think it would be cruel and unusual, wouldn't it, to suspend a death sentence, have a man continue under a death sentence the execution of which is suspended.

Mr. ELSTON. Well, they might suspend it for 30 days. They do it in civil courts, until the governor has a chance to review the case. It might be that the President would want to review the case a little longer and suspend it for 30 or 60 days until he has an opportunity to thoroughly investigate all the facts.

Mr. LARKIN. Oh, I think he has that opportunity clearly because it can't be executed until he approves it. So rather than having him go through the formality of suspending the execution of it, it is in effect suspended from the very beginning until he in his own good time does approve it. I think it is the same thing.

Mr. ELSTON. Then, he does have power to suspend the execution of the sentence for a short period of time?

Mr. LARKIN. To be specifically technical, rather than to suspend it, why it is in a state of suspense until he does approve it, you see.

Mr. ELSTON. What I mean is this: When a death sentence is given in the Army who fixes the date of the execution?

Colonel DINSMORE. The commanding general in the area, Mr. Elston.

Mr. ELSTON. Well, suppose the date of the execution of the sentence is just a day or so after the case gets to the President and he wants more time.

Colonel DINSMORE. Oh, no; he can't do that, sir. He can't fix the date of sentence. Let me remind you, a case has to go all the way through the judicial process and to the President. Now going back for a moment to your first question, all the President has to do is to defer action until he makes up his mind what he wants to do. The execution date can't be fixed until after the President has acted.

Mr. ELSTON. Oh. That is what I wasn't clear about.

Colonel DINSMORE. Then that mandate goes back and some convenient time is fixed.

Mr. ELSTON. That answers my question.

Colonel DINSMORE. The President doesn't undertake to say when they will have to do it because that is matter of local conditions.

Mr. LARKIN. And there is no date set before he gets it.

Mr. BROOKS. Any further discussion on article 71?

Mr. ELSTON. Yes, Mr. Chairman, I think there is another question.

Mr. BROOKS. All right.

Mr. ELSTON. I think we will have to change——

Mr. SMART. Subsection (c), page 60?

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Mr. ELSTON. Subsection (c) to conform to the change we already made to say "for a year or more" instead of "more than 1 year."

Mr. SMART. That is on page 60, line 3, delete the words "more than 1 year" and substitute "a year or more."

Mr. BROOKS. You have heard the amendment. Any opposition to it? If not, it stands adopted.

Any further discussion? If there is no further discussion and if there is no objection, then, to article 71 as amended it is adopted.

Mr. SMART. Article 72, vacation of suspension——

Mr. DEGRAFFENRIED. It is 12 o'clock and the House is in session.

Mr. BROOKS. Do you want to take up this one and quit on that?

Mr. SMART. These are all relatively easy.

Mr. BROOKS. Well, it has been suggested the House is in session.

Mr. SMART. Off the record.

(Discussion off the record.)

Mr. BROOKS. We better, then, meet at 10 o'clock in the morning if it is all right with the members of the committee. We will stand adjourned until 10 a. m.

(Whereupon, at 12 o'clock, the subcommittee adjourned to reconvene on Saturday, April 2, 1949, at 10 a. m.)

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UNIFORM CODE OF MILITARY JUSTICE

SATURDAY, APRIL 2, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The subcommittee met at 10 a. m., Hon. Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will please come to order. Mr. Elston, I thought, if the committee had no objection, we could return to the article that we approved yesterday with an amendment regarding the review boards.

Mr. ELSTON. That is subsection (e) of article 66.

Mr. BROOKS. Subsection (e). Since the committee's adjournment of yesterday, I have talked to some members who were anxious that we return to that particular article and consider again subsection (e). If there is no objection, I should like to present it again to the committee.

We amended subsection (e) by referring to the fact that the case might be given reconsideration by another review board. I personally feel that is one part of the bill that we cannot properly defend on the floor of the House. I have thought a good deal about it.

The accused at the present time under the draft that we are considering has a right to a trial initially. Then his case goes to the commanding officer, who has a right to any findings which he may care to make providing they do not increase the penalty. Then it goes to a reviewing board for a review, a restudy. Then that reviewing board is appointed by the Judge Advocate General and if the Judge Advocate General does not like the findings of the reviewing board, he can send it to another reviewing board. Then, as I see it, the Judge Advocate General, if he still does not like the findings, has the authority to send it on to the Judicial Council.

It seems to me that is one part of the bill that is going to be difficult to defend on the floor of the House and I should like to hear from some of the other members of the committee on it. What do you think about it, Mr. Elston?

Mr. ELSTON. Mr. Chairman, I offered the amendment yesterday to provide for one consideration, more or less in the nature of a compromise, but I said at the time that I thought the section was susceptible of abuse. The thing that disturbed me was the fact that a board of review might say that an accused was innocent. The commanding officer would not be satisfied with that decision and would refer it to the next board of review which would affirm a sentence of conviction. That does not seem to be exactly right, since it operates to the ad-

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vantage of the prosecution in this: that the prosecution can take the case to the Judicial Council as a matter of right, if they are not satisfied with the decision of the board of review, whereas the defendant cannot go to the Judicial Council unless he can show that there is some error of law that has been committed.

So I agree with the chairman that it is a dangerous provision and I think we will have trouble with it on the floor. Whether we have trouble with it or not, it does not seem to me to be right. I talked to Mr. deGraffenried about it yesterday, we discussed it, and I think he has some feeling about it, too.

Mr. DEGRAFFENRIED. I feel that way. If one board of review passes on it, if it goes further than that, it should go to the Judicial Council.

Colonel DINSMORE. Mr. Chairman, if I gave the impression yesterday that there is any such practice maintained in the Army, I want to correct it. I, too, have talked to my associates; that is, after the meeting yesterday. I am sure that the Judge Advocate General has never sent a case from one board of review to another, that it is not his practice to do so, and that he does not feel it is the proper thing to do.

The case that I cited, you will recall, was not one in which he sent it to another board, but he called in some private advisers to help make up his own mind. That he probably will continue to do as occasion requires.

But I should like to say that the Army has no objection to the amendment, which as I understand is now suggested, prohibiting the case from going from one board of review to another.

Mr. BROOKS. There has not been an amendment yet offered, but that is what we are considering. I wondered how the Navy would feel in reference to that.

Mr. LARKIN. I think the Navy would like to have this provision. They do not at the present time in their appellate system have statutory courts of review. The Judge Advocate General has appointed a board of review for his own purposes, to aid and assist him, and it is advisory only.

He has, I think as a matter of practice under the present system, sent a number of cases to this advisory board of review for close scrutiny over and above the normal review that it gets in his office, and when he gets their recommendation he wants to make assurance doubly sure and, in a manner similar to the practice in the Army, I think will ask the Assistant Judge Advocate, or some other high officer in his office, to go over it again, just to get the maximum amount of best advice.

It was with that thought in mind. If it is the sense of the committee that that might be subject to too much abuse as written here, I wonder if you might consider rewording it in such a way that he might send back for reconsideration a case once to the same board of review that reviewed it in the first instance rather than cutting out the whole section.

Mr. BROOKS. Mr. Larkin, I think your thoughts are well-timed; but the captain is standing right behind you and I wonder if he would not like to add something.

Mr. LARKIN. I wish he would.

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Captain Woods. Yes, sir. Our present experience indicates that in some cases we have a great deal of difference of opinion. Our present practice is to have a panel of three officers go through a court-martial case, pass upon it, and then it comes to the chief of the division, through me and, in substantially all cases, it goes to the board or review. Sometimes we find strong differences.

We fear, in setting up this new system, giving the final word to your first board of review—we have had a small experience under the statute—that will have the last and final say as to questions of fact and action on the sentence, that there may be some miscarriages.

Mr. Brooks. Let me ask you this. The Judge Advocate General may have several boards of review.

Captain Woods. That is correct, sir.

Mr. Brooks. And he has the authority to choose his board of review?

Captain Woods. That is perfectly true.

Mr. Brooks. He has not only authority to set up the board of review, but he has authority to choose the one he wants to consider this particular case and I think personally that that is giving him a tremendous latitude of discretion as to the type of judgment he wants to obtain in the board.

Mr. deGraffenried. Do you not think at the present time that if he were to send it back to the same board of review for reconsideration, that that would give the impression that he was dissatisfied with the result of their first review and wanted them to reconsider it?

Captain Woods. I think there is no question about that. They would have the benefit of his views to consider. I do not think our people would be coerced by his views a particle. We envisage a situation in which we would get an action by a board of review, and then a very powerful dissent. Then you have the final action on the evaluation of the evidence and the determination of the sentence resting on the opinion of the majority of the board of review, but which——

Mr. Brooks. You feel that the mere fact that there is a dissent would be a compelling reason why——

Captain Woods. It would indicate such a close margin in that particular board as to raise some question as to the correctness of the finding. Of course, it is majority rule. We would have to concede that. But if the Judge Advocate General, with the advice of his staff people, felt that it was not correct, it would be well to send it back to that board or to another board.

Mr. Elston. What would be the situation, Captain, where two boards had passed on the matter, after you get to the Judicial Council? The action of the board of review is a part of the record. Now, is the Judicial Council going to consider the finding of the first board or of the second board, or of both of them?

Captain Woods. It would all be part of the record. I would presume that they would consider the opinion of both boards on the question of law. Bit if we had a reference to a second board of review, on a finding of facts or on the measure of the sentence, I take it that the second board's finding would be conclusive.

Mr. Elston. Since the board of review is the final authority on questions of fact which board's decision is final, the first board's or the second board's?

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Captain WOODS. I take it that the second board's would be under the wording of this provision as now written.

Mr. ELSTON. This does not say so. It simply says that he may refer it to another board, but one board has just as much authority in law as the other. And it is assumed that each board gave the same amount of time and consideration. So why should the second board be considered any more an authority in its decision, any more final, than the first one?

Captain WOODS. Of course, if your permit this, you would set up a further step in the appellate system and they would have the last step.

Mr. ELSTON. I do not think there is any precedent for it. You would not have a situation like that in the civil courts. You always go one step higher in the civil courts. You never move from one court of the same jurisdiction to another one of the same jurisdiction.

What is the situation of the defendant in this kind of case, where he has had a board of review completely exonerating him? Then it goes to another board of review, because the referring authority does not like the decision. Or the Judge Advocate General does not like the decision. The second board renders a decision diametrically opposed to the decision of the first board, and that becomes final.

Captain WOODS. I think his position has certainly suffered.

Mr. ELSTON. I think you are putting the matter too much into the hands of the Judge Advocate General rather than your board of review.

Captain WOODS. You could consider it the other way, Mr. Elston. The second board's decision may be favorable.

Mr. ELSTON. Sometimes that would happen, there is no doubt about that. I am not worried about those cases. If that is all we were concerned about, then all right. But I am concerned about a case where a board says that a man is not guilty, the facts in the case do not establish his guilt beyond a reasonable doubt and they feel that the case should be dimissed. Then the Judge Advocate General refers it to another board. They have exactly the same authority and they have exactly the same record in front of them and have exactly the same power. And yet you say their decision should be taken as final rather than the decision of the first board. Where is there any precedent for that?

Captain WOODS. I have no precedent in the civil practice. Nevertheless we feel rather strongly that the public at large looks to the Judge Advocate General for the administration of justice. In these particular cases he would have nothing whatever to say.

Mr. ELSTON. If he has got the proper kind of board of review, that is made up of—is it three persons?

Captain WOODS. That is correct.

Mr. ELSTON. If they are competent men, if he selects competent men to serve as members of that board, why should not the decision of the board in the first instance be final?

Captain WOODS. I think that might well be true after we have had experience with boards established, and he has confidence in the personnel of those boards.

Mr. ELSTON. Suppose the Judge Advocate General is not satisfied with the decision of the board, a miscarriage of justice is not going to take place necessarily, because he can still refer it to the Judicial Council.

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Captain WOODS. Not on questions of fact or on sentence.

Mr. ELSTON. On questions of law. There has been many a case in the civil courts where the appellate court has erred, and a guilty person has been permitted to go scot free. Of course, the theory of the law is that it is better that 99 guilty persons escape than that 1 innocent person be convicted.

Captain WOODS. I understand that.

Mr. DEGRAFFENRIED. He would have the same choice in selecting the first board of review as he would have in selecting the second board of review, would he not?

Captain WOODS. I do not think so as a practical matter, Mr. deGraffenried. Administratively these records will doubtless come to the boards of review without any preliminary survey by the Judge Advocate General. He cannot be expected to go through each case.

Mr. DEGRAFFENRIED. You do not think he would be more careful in the selection of the second board than in the selection of the first board?

Captain WOODS. I think they would be on a parity. I think all the boards would be composed of excellent men, to the extent of our capacity.

Mr. BROOKS. Captain, this is the way it impresses me. I think it is very commendable that in the absence of statutory authority he is interested in obtaining what he feels is a correct solution, a correct decision.

Captain WOODS. That is correct.

Mr. BROOKS. Now, when we set this up, in effect, as a court, with statutory authority, the situation takes on a different light. He should have competent boards set up. Each case goes to a board which he feels is competent. An erroneous opinion comes back. Is not his remedy the replacement of the whole board and the nomination of a competent board?

Captain WOODS. That is the action he would necessarily have to take after error had been demonstrated. Those cases would suffer.

Mr. BROOKS. Of course, it is regrettable, but there are cases of innocence where the defendant is found guilty. That is human error. But, on the other hand, it seems to me that what you are doing here is getting one review board and saying, in effect, that if that is not satisfactory, he will have another review board who would be found to decide the other way.

Captain WOODS. That is not what we seek. We merely seek to have the opinion of the first board, if there is any doubt, fortified by the opinion of the second board.

Mr. BROOKS. Would you not get that by an appeal to the Judicial Council?

Captain WOODS. Except on the law, we cannot appeal to the Judicial Council. The Judge Advocate General to date has had no experience in evaluation of sentences. That has all been done by the Bureau of Personnel and the Commandant of the Marine Corps.

Mr. BROOKS. It seems to me, that what you are getting to is this: If one board decides one way and another one decides the other way, you are going to weaken your whole system of justice. It is not a case where you have a divided court, 2 to 1, but here you have two separate tribunals rendering a decision on the same case, and the decisions may

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be diametrically opposed to each other. I think that hurts the whole system.

Captain WOODS. The second one would necessarily have the finality in the matter, sir.

Mr. BROOKS. Still they have the same authority, and there is the same number of persons, and it is assumed of the same competency, and one decision is one way and the other decision is the other way.

Captain WOODS. With the benefit of the record, of all that had gone before; the opinion of the first board plus the reference opinion of the Judge Advocate General.

Mr. BROOKS. Mr. Smart, do you have something to say on this?

Mr. SMART. I think the committee ought to bear two things in mind about this situation. One is that the board of review itself, if it finds insufficiency in the facts, may return that case for rehearing. Secondly I think you ought to go two steps above the Judge Advocate General. Assume that a case has arrived, that the board of review has sustained both the facts and the law in a case which carries a severe penalty of confinement and the Judge Advocate General thinks it is an unconscionable sentence, but he cannot do anything about it.

We must remember that the respective Secretaries have unlimited power of clemency. I cannot conceive of a situation where the Judge Advocate General would point out to his Secretary that a given sentence was unconscionable, and that the Secretary would refuse to take appropriate clemency action.

So that in a case where it is to the best interests of the accused to have the sentence reduced, I say that it will ultimately be reduced by the Secretary. As to other errors that might have been made in behalf of the accused, I think it is commonly held that the accused is entitled to the benefit of that error or doubt.

So I see nothing to be lost by deleting the section.

Mr. BROOKS. What does the Air Force think about it?

Major ALYEA. General Harmon stated that even with statutory authority he doubted whether he would ever use it; so, so far as the Air Force is concerned, I do not think we would object either way, whether we had it or it were deleted.

Mr. BROOKS. What does the Coast Guard say about it?

Mr. WEBB. The Coast Guard follows the position of the Navy, sir.

Mr. DEGRAFFENRIED. I make the motion, Mr. Chairman, that we strike out subsection (e) of article 66, and also strike out the word "otherwise" in subsection (f), right at the start of the section.

Colonel DINSMORE. May I inquire, Mr. Chairman, whether that would preclude the suggestion made by Mr. Larkin, that the Judge Advocate General may refer the case back to the same board?

I might sat that the Army has no objection to that and I might point out that it is humanly possible that a board of review, with the best intentions and the best ability, may overlook some factor which the Judge Advocate General thinks ought to be considered.

Mr. ELSTON. Colonel, the section that Mr. deGraffenried referred to says to the same or another board.

Colonel DINSMORE. Yes, sir.

Mr. ELSTON. So it would not be rereferred to any board; that is, after the one board had passed on it, it could not be referred again, if that language were stricken out.

Colonel DINSMORE. That is what I thought.

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Mr. BROOKS. I am not recommending even this, but it seems to me that it would be preferable if you are going to make any change: In a case where the Judge Advocate General feels that error has been committed, to permit an appeal to the Judicial Council both on the law and the facts, rather than to send it back to the same board for another decision and a review of what it has already considered and on which it has made its finding.

Gentlemen, you have heard the motion. Is there any further discussion?

If there is no objection, subsection (e), and the word "otherwise" in subsection (f) shall be stricken out.

Mr. SMART. May I offer a further corrective amendment? That you reletter subsections (f) and (g) to (e) and (f), respectively.

Mr. LARKIN. May I also offer a further amendment? I assume that the motion carried.

Mr. BROOKS. Yes.

Mr. LARKIN. For the sake of conformity, I would request that you consider deleting in article 70, which has already been adopted by the committee, the words on page 58, line 22, at the end of the line, "has requested the reconsideration of a case before the board of review or".

That is just to make it conform. There is no reason for that language, since you have deleted (e).

Mr. ELSTON. I so move, Mr. Chairman.

Mr. BROOKS. Is there objection? If not, the correction will be adopted.

Let us pass on to the next article, Mr. Smart, article 72.

Mr. SMART (reading):

ART. 72. Vacation of suspension.

(a) Prior to the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at such hearing by counsel if he so desires.

(b) The record of the hearing and the recommendations of the officer having special court-martial jurisdiction shall be forwarded for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, the vacation shall be effective, subject to applicable restrictions in article 71 (c), to execute any unexecuted portion of the sentence except a dismissal. The vacation of the suspension of a dismissal shall not be effective until approved by the Secretary of the Department.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

References: A. W. 51 (b); M. C. M., paragraph 94; N. C. and B., section 476; Keeffe report, pages 313–318.

Commentary: This article is new. It applies where a sentence has been suspended pending good behavior of the accused, that is, where the accused is a probationer. Under present Navy practice, the commanding officer of a probationer has authority to vacate probation whenever he deems the conduct of the probationer unsatisfactory. Under Army practice, an officer who has the power to convene a court of the kind which adjudged the sentence may similarly vacate probation.

This article requires that where the vacating of the supension of a serious sentence is contemplated, a record of the facts justifying the

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vacating action will be made and these facts will be given consideration by two officers.

Where the original sentence includes a bad-conduct or dishonorable discharge, or confinement in excess of 1 year, such vacation will not be effective to execute the sentence until the review provided in articles 66 and 67 has been completed. Where the suspended sentence includes a dismissal, the Secretary of the Department must act before the dismissal may be executed, whether or not he has previously approved it.

Mr. BROOKS. Mr. Smart, where is that word "probationer" used there?

Mr. SMART. That is a new word, so far as military law is concerned, Mr. Chairman. Mr. Larkin can give you some information on that point.

Mr. LARKIN. It is used because I think it most clearly describes the position of the person contemplated in this article. This article, I might say, Mr. Chairman, is substantially new and it is designed to set up the following procedure.

There are a number of instances where after the accused has been sentenced and confined he is sent to a retraining command or a retraining center and subsequently is restored to duty. The services are anxious to do that to the maximum extent and, as you heard Captain McGinnis and Colonel Garrison, they have such programs.

Frequently an accused who is returned to active duty has not completed his sentence by a considerable portion and he is returned to duty in effect on probation. The unexecuted part of the sentence may still hang over him but pending his good behavior, upon his return to duty, over a certain period of what is most accurately called probation, he may be able to work his way out of, or to have the unexecuted portion of his sentence and even the dishonorable discharge or the bad conduct discharge set aside, and ultimately get an honorable discharge.

Now, when he is back on duty on probation, there are a number of instances where such persons commit additional offenses or in some way by their conduct violate the standard of good behavior. In the same fashion as in civilian courts, upon such violations, they may be returned to serve out the unexpired portion of their sentence or the dishonorable discharge or bad conduct discharge which has been suspended may be revoked.

To assure that when a man who has been returned to duty and is charged with violation of this state of probation, that the suspended sentence that he has received or the suspension of the balance of the execution is not capriciously revoked or arbitrarily revoked, and that the dishonorable discharge will not be capriciously executed and have him discharged from the Service, we have provided this type of hearing so that the elements of the offense or the facts of the conduct which is charged amounts to a violation on his part, are clearly set forth.

We have provided this procedure which, as I say, is substantially new. It is a protection for the accused.

It is perfectly true that there are any number of instances where a man who is given this other chance just does not make good at all and in a large number of those cases he should have a vacation of the suspension; that is, a vacation of the suspension is entirely appropriate and he should be sent back to serve out the unexecuted portion of his

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sentence, or it is perfectly appropriate that the disbonorable discharge be executed. All that this provides is that it will be done after this protective procedure.

You will notice that in no case can a dishonorable discharge or bad-conduct discharge be executed on such a vacation unless at one time or another either before or after this, it has been reviewed by the board of review.

Mr. DEGRAFFENRIED. That follows the same system they have in the Federal courts now?

Mr. LARKIN. That is right, and I think in most State courts.

Mr. DEGRAFFENRIED. Yes.

Mr. LARKIN. I know that in a good many State courts, at any rate, there must be a hearing before a suspended sentence can be vacated. This follows that practice, Mr. deGraffenried.

Mr. ELSTON. I do not see where you have a hearing as to general court martial. Article 72, section (a), provides there shall be a hearing on a special court martial. I do not see where there is anything said as to a general court martial.

Mr. LARKIN. I think if you read on, Mr. Elston, you will see it.

Mr. SMART. It is in line 13, Mr. Elston, where it says, "or of any general court-martial sentence."

Mr. ELSTON. Yes, but then it goes on to say that "the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation."

Mr. LARKIN. That is right. He is the officer designated to hold the hearing.

Mr. ELSTON. Even though it is a general court martial?

Mr. LARKIN. Because he happens to be the local commanding officer under whom the man is serving and in all likelihood the man to whose attention the alleged violation is brought in the first instance.

Mr. ELSTON. That is the point that I was trying to understand. You have a person exercising special court-martial jurisdiction conducting a hearing as to a general court-martial conviction.

Mr. LARKIN. That is right. He is the logical man to hold the hearing. The record of the hearing goes up for review in a general court-martial case to the commander having general court-martial authority, in (b).

Mr. ELSTON. I see that, but I could not understand why you go down one step and have an officer exercising special court-martial jurisdiction reviewing a suspended sentence in a general court martial case.

Mr. LARKIN. It was just for the purpose of convenience in holding the hearing. His decision does not become final in a general court-martial case until it is approved by the general court martial.

Mr. BROOKS. Does the record in all cases go up to the general court-martial officer having jurisdiction?

Mr. SMART. I think subsection (b) clearly prescribes that. You see, it does not state that it is limited to special or general. It says the record of the hearing. That record may involve a special court martial, bad conduct discharge, or it may be clearly a general court martial case. In either instance, it would go up to the officer having general court-martial jurisdiction.

Mr. BROOKS. It does not go through the local commanding officer. It goes straight to the officer having general court-martial jurisdiction.

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Mr. SMART. I think it would be true in practically every case that the officer exercising special court-martial jurisdiction would be the officer in command of the probationer.

Mr. BROOKS. Gentlemen, is there any further discussion on this article? If not, and if there is no objection, we shall consider it as adopted.

Will you proceed to article 73, Mr. Smart.

Mr. SMART (reading):

ART. 73. Petition for a new trial.

At any time within one year after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad conduct discharge, or confinement for more than one year, the accused may petition The Judge Advocate General for a new trial on grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before the Board of Review or before the Judicial Council, The Judge Advocate General shall refer the petition to the Board or Council, respectively, for action. Otherwise The Judge Advocate General shall act upon the petition.

References: A. W. 53; proposed A. G. N., article 39 (g).

Commentary: This article provides for a petition for a new trial as provided in A. W. 53 and in proposed A. G. N., article 39 (g). Action on the petition is to be taken by a board of review or the Judicial Council if the case is being reviewed or is to be reviewed by such tribunal. Otherwise the Judge Advocate General shall either deny or grant the new trial. See article 75 as to restoration of rights privileges, and property after a new trial.

Mr. BROOKS. I would like to ask you this. This is limited to a period of 1 year. For the purpose of the record will you explain why it is limited that way?

Mr. LARKIN. That is in an effort, of course, to obtain finality at some point and, in addition, it was adopted from article of war 53 as it was amended by Public Law 759 last year. That one feature was adopted.

Mr. ELSTON. Do you not think we should change this to conform to the changes we have heretofore made, and make it a year or more?

Mr. LARKIN. Yes.

Mr. SMART. That is in line 11, page 61.

Mr. BROOKS. What do you have to say with reference to extending this to death?

Mr. SMART. Do you have the feeling there that perhaps a death sentence could not be executed before the expiration of one year, in view of this article?

Mr. BROOKS. That is the thought I had in mind.

Mr. SMART. Justice McGuire has raised that same point, Mr. Chairman, the question as to whether or not a death sentence could be executed before the expiration of 1 year, in view of this provision.

Mr. LARKIN. We had no such intention of limiting the imposition of a death penalty when it is finally approved by the President, after the complete review for this purpose.

As you notice—and this, which I want to bring to your attention, has been commented on by witnesses—we have made this petition depend on the grounds of newly discovered evidence or fraud on the court. In your amendment to article of war 53, last year, the standard was for good cause shown. The reason for the difference was that we felt that the appellate system as devised here is a tight, comprehensive and efficient appellate system, that it is wholly capable of reviewing

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all matters on the record; that the review of cases should properly be as complete as possible in the appellate system. I think that is a principle that is followed pretty closely in civilian courts.

There are two circumstances which may arise which may not have been on the record and which it may not have been possible for the appellate system to review. They are newly discovered evidence which, of course, was not available at the time and did not appear at the trial; and fraud on the court which might have been such a fraud that it could not appear on the record. That might have been the fraud itself. So that those two are really the only remaining good causes left after your appellate review on the record. This is not written in such a way that no case can become final, pending the lapse of a year, and on the possibility which may be very remote that there is going to be newly discovered evidence or there has now been discovered that fraud was practiced on the court. If, of course, they do arise that permits the remedy; but it is not intended that there is no finality until the year elapses.

Mr. DEGRAFFENRIED. Is that a new section, that is not present in existing law?

Mr. LARKIN. It is present in existing Army and Air Force law, except that the petition may be granted by the JAG for good cause shown within a year as distinguished from the two grounds we set out.

Mr. DEGRAFFENRIED. I just wondered how you got that 1 year in there.

Mr. LARKIN. We took that 1 year from the present law, article of war 53.

Mr. DEGRAFFENRIED. This is really much broader than in most civil courts, is it not?

Mr. LARKIN. I do not think so. There have been a number of cases; as far back as the Mooney case in California, where a writ of habeas corpus does not lie but there is the contention that some fraud was practiced on the court before or during the trial, a fraud which amounted to concealment of some evidence or a concealment of the conduct of some official of the court. It has been the practice of some civil courts, some State courts, after the conviction is firmed where habeas corpus will not lie, that the court will permit a so-called writ of error coram nobis, which is an old English writ, which has been revived for just this particular kind of circumstance. What we did was to combine what amounts to a writ of error coram nobis with the motion for a new trial on newly discovered evidence. We have provided for both of them and to our minds they are the only additional circumstances over and above the appeal that need a remedy. But as to the time limit, it was the idea of Mr. Elston's committee last time.

Mr. DEGRAFFENRIED. I like the newly discovered evidence, and the fraud feature, rather than for good cause shown. I think that is too broad. We have a statute in our State which gives you the right to file a motion for a new trial on newly discovered evidence.

Mr. LARKIN. So do we.

Mr. DEGRAFFENRIED. But we don't have any length of time in it. The only question in my mind is the year. As a matter of fact, after a trial people begin to talk who know something; that is, when they think they are not going to be used as witnesses they will disclose something, and you get newly discovered evidence.

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Mr. LARKIN. I think the newly discovered evidence will be surrounded by the practices and procedures in the Federal court that govern that motion such as—oh, that the newly discovered evidence is not cumulative; that if it had been presented to the jury it at least would have changed its mind; and various other rules that circumscribe the use of that type of motion.

Mr. ELSTON. I still think we will have the question about the death sentence.

Mr. DEGRAFFENRIED. So do I.

Mr. ELSTON. You are bound to give to a person sentenced to death less of an opportunity to petition for a new trial than other offenders, because if he is executed within a year he is considerably handicapped in filing petition for a new trial thereafter.

Mr. LARKIN. If you think that is not complete, I should say we should make it clear. I think it would be very bad, and there is no intention, to construe this as preventing the execution of the death sentence until after this 1 year period. These remedies are available in civil courts, and they are not construed as a stay of any death sentence at all, and they should not be.

Mr. ELSTON. I think you would have to state it or it would be construed that he was not to be executed in less than a year.

Mr. LARKIN. Either the explanation that it is not intended to and the adoption by the committee on that explanation is sufficient, or we can write in something.

Mr. BROOKS. Would it be better to consider the thought of reducing the time for everyone? Had you given that any thought?

Mr. LARKIN. We just adopted the year provided by your committee last year. I would say this. I do not think it is an unreasonable time. I know very well that a motion for a new trial, because of fraud on the court, is the type of motion in New York State that can be brought any time. There is no time limit. I think the jurisdiction of New York is quite unhappy about that, because it just means that there is practically no finality. As against that no time limit a year, I think, is perfectly all right.

Mr. ELSTON. I think the time is all right, because fraud is not usually discovered immediately.

Mr. LARKIN. There are not many cases where there ever is fraud. I think in courts martial the percentage is very much lower than it would be in a civil court.

Mr. ELSTON. May I ask here what the normal amount of time would be between trial and final review by the Judicial Council? What time do you anticipate it will take to go through all the steps?

Mr. LARKIN. I should certainly expect it would be completed within a year. But I just cannot give any estimate at this time. I think experience is going to indicate that. I might ask the representatives of the services as to their guess as to the time it takes to complete review now.

Mr. ELSTON. Regardless of the time, a person sentenced to death does not necessaruly go through the Judicial Council. There may not be any error of law that his counsel claims and he may go through only the board of review. So his case would be completely reviewed and could be completely reviewed in a very short space of time.

Mr. LARKIN. Well, we have not reached that. We skipped the Judicial Council provision, Mr. Elston. When we come to it, you

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will find we have made a review by the Judicial Council mandatory in death sentences, so that the review in a death case will follow the course of convening the authority, board of review, Judicial Council, and final approval by the President. They are all mandatory; there is no exception in that case.

Mr. ELSTON. That would take considerable time, then?

Mr. LARKIN. That is right; it would.

Mr. ELSTON. So that would make the year all the more reasonable

Mr. LARKIN. I think so.

Mr. BROOKS. Could not we get in the record some estimate of the services of what they think will be a reasonable time to complete the average case? I think that would be of general interest to the Congress.

Mr. LARKIN. Colonel Dinsmore, do you have a guess as to how long it takes to complete the review of a death sentence now?

Colonel DINSMORE. It varies, depending on the difficulty of the questions involved, but I would say a matter of only a few months.

Mr. BROOKS. All of those major violations normally should be reviewed in a matter of a few months; is that correct?

Colonel DINSMORE. That is right.

Mr. BROOKS. And the case completed, say, within 3 or 4 months?

Colonel DINSMORE. Yes, sir. When we had the great accumulation of cases during the war and all of those records came in from the various overseas jurisdictions and theaters, we had a tremendous backlog, and at that time it took longer than it normally does in time of peace. So that it would be an extremely unusual case, Mr. Chairman, that would take a year.

Mr. BROOKS. Are there any further questions?

Mr. LARKIN. One thing that has been brought to my attention is that the Federal court, the district court, has construed a similar provision of this kind in the Federal courts to give the right of petition as not amounting to a stay of execution if all other review is completed. That was certainly our intention here.

Mr. ELSTON. I notice you have left out a provision that we had in H. R. 2575 last year about reviewing cases which originated during World War II. Can you tell us why that was omitted?

Mr. LARKIN. I think it was omitted only because in our opinion the provision continues and remains. I say that because under section 12 of the bill, which is on page 98 and is enacted into law, although not as a part of the uniform code itself, but enacted into Federal law, that provides that any rights and liabilities existing under such section or parts thereof prior to the effective date of this act shall not be affected by this appeal and this act shall not be effective to authorize trial or punishment for any conviction if such trial or punishment is barred by the provisions of existing law. So that that right which was granted by article 53, that all World War II cases have the right to petition the Judge Advocate in 1 year after the termination of the war, still remains by virtue of the fact such rights are not lost to anybody, or such rights as they had under the previous law are retained.

Mr. SMART. I would point out, of course, Mr. Elston, that existing law is applicable only to Army and Air Force personnel. So this will perpetuate the difference which exists today, that is, naval and Coast Guard and Marine Corps personnel, when prosecuted by the Navy, offenders of World War II in those services, would not be

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accorded the same right as is preserved for the Army and Air Force personnel.

Mr. LARKIN. That is right. That is the difference.

Mr. ELSTON. I think it probably ought to be restated, so that there will be no question about it and so that it will apply to all services. We thought last year that was a rather good provision because of the many cases that had arisen during World War II in which there were claims they had not had a fair trial or there had been some miscarriage of justice. I do not know how many cases came in by reason of that section.

Mr. LARKIN. There has only been experience since February 1, you see.

Mr. ELSTON. That is true, that it has only been since February 1, but there might be a number of them who waited until they could file their petitions for review.

For the sake of the record, have there been any or very many?

Mr. LARKIN. The Air Force has none, apparently, so far.

Major SOLF. It is my impression about 2 weeks ago we had eight petitions. There may be more right now.

Mr. ELSTON. It would not hurt to have that section rewritten so that it would apply to all services?

Mr. LARKIN. That petition, of course, was for good cause shown. The way we worded this is as I have indicated. If we redraft this at the committee's request or add this additional provision to this for my guidance do you want "for good cause shown" in that connection? It ought to be consistent, whatever it is.

Mr. ELSTON. I do not know. There is a difference between the two types of cases. The cases that come up after this code is adopted are largely cases that arose after the war. During the war, there was a tremendous volume of cases. There were trials conducted not in the same leisurely manner they could now be conducted, and it might be there is no fraud involved, there is no newly discovered evidence, but it is a case that the appeal should be reviewed. We have heard of a number of them—cases where the claim is made that there was a miscarriage of justice.

My own notion is the services did a magnificent job in going over all of the cases and trying to equalize the sentences. I think they did a tremendous job and did it well. At the same time, there might be some cases that have not been adequately reviewed, and I do not believe we ought to close the door. If there is some good cause shown, without newly discovered evidence and without fraud, it seems to me they ought to be reviewed.

Mr. BROOKS. Is it your idea to apply that suggestion to cases already disposed of where they ask for a review?

Mr. ELSTON. Yes; in cases that arose during World War II. We wrote that into the law last year and gave every person in the service an opportunity to have his case reheard, and it was of great benefit to Members of Congress, I will say, because I do not suppose there was a Member of Congress who did not have somebody appeal to him about his case—that he did not get justice and the like—and in those instances we were able to reply that the door was still open and they could still have a rehearing of their cases if they could give good reason.

Mr. LARKIN. May I suggest, then, in this connection, that in adding this provision that World War II cases have this right of petition, we

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have a cut-off somewhere, because the war is not over yet. Cases currently tried are construed to come within the additional time limit you have in that proviso, and I do not know but what there should be a distinction between the 1 year petition for fraud and newly discovered evidence, starting with cases that are tried under this new code whenever it becomes effective and the petition as to all of the cases that are still within the war period, the war not having terminated and the cases being tried today coming under that provision.

Mr. ELSTON. I think that is right. They are amply safeguarded under this code.

Mr. LARKIN. Yes.

Mr. ELSTON. But as to the ones who did not have an opportunity to come under this code, they would have a right to have their cases reviewed.

Mr. LARKIN. I think we can draft something.

Mr. BROOKS. Will you do that?

Mr. SMART. I would suggest that we put a time limit on it of 1 year. You cannot leave this thing open interminably in the future, because, the longer it is open, the more difficult it is to obtain evidence, witnesses, and what not, and it unduly weakens the prosecution.

Mr. ELSTON. I so move you, Mr. Chairman, that we have Mr. Smart draft the amendment.

Mr. BROOKS. Before we do that, let us hear from Captain Woods.

Captain WOODS. The only suggestion I have to make is I want to invite your attention to section 301 of the Servicemen's Readjustment Act of 1944, where arrangement for a readjustment is made, which provides for a review of discharges and dismissals, and section 207 of the Reorganization Act which provides for authority to correct records.

Mr. SMART. I would like to point out to the committee just how difficult it is if the man is dishonorably discharged to ever get his case before the 207 board for correction of military records. Ordinarily, if it is purely an administrative, technical change in the record, those applications will go directly to the board. I do not know what the policy is in the Navy, but certainly in the Army any record involving the correction of a dishonorable discharge must first be approved by the Secretary before it ever goes before that board. So far as I know, there may be one case involving dishonorable discharge that has received favorable action by the board for correction of military records, but I do not believe it is accomplishing the purpose Congress hoped it would when they wrote that into the law, and that was the feeling last year when the committee wrote this provision into the law, to accord a right for a new trial as a matter of law and not for it to hinge upon a policy over in the Department of the Army.

I cannot speak as to how the act has operated in the Navy.

Captain WOODS. I think it has operated far more extensively in the Navy. I think it was not necessary to rely upon those two provisions, but it would seem to me there is a great deal of administrative burden involved; and, in the case where the man has gone to one of those two boards and the sentence has been altered in his favor, there should be no further rehearing in his case possible for the purpose of altering a conviction, but the convictions in those hearings should stand. The action has been addressed solely to the sentence and correction of the records to alter the form of discharge.

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Mr. BROOKS. Could not the provision be so drafted that the applicant for rehearing on that basis should be limited to a request before one tribunal or the other?

Mr. SMART. I believe, as a matter of form, the particular person who may pass upon this application will take that into consideration when he is considering "for good cause shown." If he finds the man has already received some administrative relief, I think he would be thoroughly justified in considering that along with the other elements of "good cause shown."

Mr. BROOKS. You think that is a type of judicial notice?

Mr. SMART. I am not certain.

Captain WOODS. I would not think so, because it is directed to the fact of conviction. I would feel the Judge Advocate General, in good cause shown, would have to order a rehearing, even though the sentence and discharge had previously been altered by one of those boards merely to cure the conviction.

Mr. SMART. I would say in that case, if the Judge Advocate General felt, in spite of any administrative relief this man may have had, that he is entitled to additonal relief by way of a rehearing of his case, then why preclude him?

Captain WOODS. I might mention very large numbers of some courts-martial actions have been reviewed by the board of discharges and dismissals, because we had the bad-conduct discharge.

Mr. BROOKS. Let me make the suggestion, then, Mr. Elston, that Mr. Larkin and Mr. Smart get together and try to work something out and do so in collaboration with the Navy.

Mr. SMART. I think it might be very well if we might write into this particular section a proviso that would limit it to cases involving dishonorable discharge, bad-conduct discharge, or confinement in cases of 1 year or more. The thing I think the Congress is trying to get at is to insure a review of the serious cases that really affect the man seriously in his civilian life.

Mr. BROOKS. I think you can get together and we can take that up Monday; and, if you have trouble, the committee can discuss it further.

Mr. ELSTON. Our section last year on this subject included summary courts-martial cases?

Mr. SMART. It was without specification as to the type of court.

Mr. LARKIN. It provided for dismissals, dishonorable discharge, or bad-conduct discharge. Inasmuch as the Army special courts did not have authority at that time to impose a bad-conduct discharge, I doubt that it covers them. The Navy's comparable court has had the authority to impose bad-conduct discharges for a number of years.

Mr. BROOKS. If there is no further suggestion on that point, what about the last sentence in article 73, reading "otherwise the Judge Advocate General shall act upon the petition"? How much authority does that give the Judge Advocate General?

Mr. LARKIN. I think it gives him complete authority to order a rehearing. It was our idea that, not knowing when the petition might be made and since it might be made during the course of the appellate review, the petition is made while the case is before the board of review or the Judicial Council, it is entirely appropriate to send that petition to them. Otherwise, you would have the incongruous situation of the board of review or the Judicial Council reviewing a case

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on the record on appeal while the Judge Advocate General at the same time is reviewing the petition on grounds of fraud or newly discovered evidence. So it was our idea, if this petition is made during the course of the appeal, it should be addressed to the tribunal that is considering the appeal. In the event, however, that the appeal is concluded, then we would have the Judge Advocate General do it, just as you provided he should do it last year in article of war 53.

Mr. BROOKS. The defendant could elect the time when he chose to present the petition?

Mr. LARKIN. It is entitely up to him. He will be the only one, presumably, who will discover either of those grounds, and it is up to him to come forward whenever he does, as long as it is within a year.

Mr. BROOKS. Is there any further discussion?

Mr. ELSTON. Just one other question. There is no provision for the Judge Advocate General to vacate sentence or restore rights or grant an administrative discharge in lieu of a dishonorable discharge or bad-conduct discharge, is there?

Mr. LARKIN. No; that is right; not the Judge Advocate General. The Secretary of the Department, in a later article, has that complete power.

Mr. DEGRAFFENRIED. The Judge Advocate General, under those circumstances, could do one of two things: just deny the petition or order a new trial?

Mr. LARKIN. That is right.

Mr. BROOKS. Is there any further discussion of article 73? If not, it will stand adopted subject to the reservation of the amendment we discussed.

Now take up article 74.

Mr. SMART (reading):

ART. 74. Remission and suspension.

(a) The Secretary of the Department and any Under Secretary, Assistant Secretary, or commanding officer designated by the Secretary may remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President.

(b) The Secretary of the Department may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court martial.

References: A. W. 51 (b); proposed A. G. N., article 39 (h).

Commentary: Under this article the Secretary of a Department may review the sentence of any court martial, which will give him clemency and parole powers as well as ultimate control of sentence uniformity. Action hereunder may be taken without regard to whether the person acting has previously approved the sentence.

Mr. ELSTON. Under that section, the Secretary could designate the Judge Advocate General for the purposes of remitting or suspending any part of the sentence?

Mr. LARKIN. That is right; but it centralizes responsibility in him.

Mr. BROOKS. On subsection (b), explain the reason for making a change there from a judicial finding for discharge or dismissal and that of an administrative finding.

Mr. LARKIN. Well, a discharge or dismissal—that is, a dishonorable discharge or a bad-conduct discharge—can be imposed only by a court martial, and the Secretary, by way of clemency, can substitute for any dishonorable discharge or any bad-conduct discharge or any sentence

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of dismissal of an officer what, in his own discretion, by way of clemency, is a form of administrative discharge. This authority enables him to extend clemency.

Mr. BROOKS. Are there any further questions on article 74? If not and there is no objection, it will stand approved.

The next is Article 75, Restoration.

Mr. SMART (reading):

ART. 75. Restoration.

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the new trial or rehearing.

(b) Where a previously executed sentence of dishonorable or bad-conduct discharge is not sustained on a new trial, the Secretary of the Department shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) Where a previously executed sentence of dismissal is not sustained on a new trial, the Secretary of the Department shall substitute therefor a form of discharge authorized for administrative issuance, and the officer dismissed by such sentence may be reappointed by the President alone to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowances.

References: A. W. 53.

Commentary: This article is new in that restoration of rights, privileges, and property is mandatory and in that restitution of forfeitures previously collected is authorized. If a new trial or rehearing is ordered, restoration is to be made in regard to such part of the original sentence as is not adjudged upon the new trial or rehearing.

Under subdivision (b), the Secretary of the Department shall order an administrative discharge substituted for a bad-conduct or dishonorable discharge which has not been sustained on a new trial unless the accused is to be restored to duty.

Subdivision (c) requires an administrative discharge to be substituted for a dismissal which is not sustained on a new trial. In addition, the President is given authority to reappoint the accused to such rank and precedence as he believes will correct the injustice of the dismissal.

This article applies not only to new trials but also to all cases where an executed or partly executed sentence is set aside or disapproved under the provisions of this code.

Mr. BROOKS. Does that last mean pay for the actual time he did not serve; in other words, is that retroactive pay?

Mr. LARKIN. That covers the time between the first and second trials.

Mr. BROOKS. In the case of a man that is reopened under subsection (c), he is supposed to be put back and made whole insofar as possible; but the last sentence refers to the fact that he shall be considered as actual service for all purposes, including the right to receive pay and allowances. Does that mean retroactive pay?

Mr. LARKIN. I think it is retroactive pay to the extent he has not received anything from the time he was dismissed until the time he is reappointed. When he is reappointed, it is retroactive for that period.

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Mr. BROOKS. For the period during which he was out of the service?

Mr. LARKIN. That is right.

Mr. BROOKS. Also, it would mean longevity would operate during his absence from service under those conditions?

Mr. LARKIN. That is right.

Mr. ELSTON. I would like to ask about section (b), where it is provided—

> Where a previously executed sentence of dishonorable or bad-conduct discharge is not sustained on a new trial, the Secretary of the Department shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

That makes it mandatory that he shall substitute another form of discharge. Suppose they just wanted to completely dismiss the charges against him; suppose they have not been sustained and no discharge is warranted, no form of discharge is warranted; and suppose his enlistment had expired by that time?

Mr. LARKIN. In that case he would have to substitute an administrative discharge in the event the term of enlistment has expired, and if they desire——

Mr. ELSTON. Could not he get an honorable discharge?

Mr. LARKIN. We would get one by this provision.

Mr. ELSTON. Is that what is meant by "administrative discharge"?

Mr. LARKIN. It could be one of three kinds; it could be honorable, under honorable conditions, and the third would be "undesirable." You recall we discussed the same type of possibility under article 4.

Mr. ELSTON. Are those all included under this expression, "a form of discharge authorized for administrative issuance"?

Mr. LARKIN. That is right. There are only three that are authorized for administrative issuance.

Mr. ELSTON. What is the present policy of the services relating to the restoration to an enlisted person of his rights, where he has received a dishonorable or a bad-conduct discharge and that is suspended as a part of his sentence? What is the present policy?

Mr. SMART. I think, Mr. Elston, the two witnesses who appeared the other day before the committee, the Navy captain and the Army colonel, who gave testimony regarding the incarceration of prisoners in Federal penal institutions, touched the point you now raise. I think your inquiry is directed to the policy of the respective departments in permitting various and sundry convening authorities or review authorities to suspend sentence when, at the same time, they know, by virtue of the policy which is not known to everyone, that they are going subsequently to execute that dismissal and the man is not going to be given any opportunity to reenlist.

I do not know what the Navy's procedure is on it, but it has previously been pointed out that stealing in the services is an extremely bad thing, is very difficult to cope with, and ruins morale. That is a particular type of offense, but I think it may generally be stated to be true that in the Army, at least, all felony types of crimes which result in conviction of an enlisted person, even though he may receive a dishonorable discharge that is suspended, that that is just so much double talk, because, as a matter of policy, that discharge will be executed when he has served an appropriate amount of his sentence. He then gets his dishonorable discharge, and is spite of the fact they say he may subsequently apply for reenlistment and try to serve

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another enlistment and work his way out with an honorable discharge. nevertheless they are just not taking that kind of man back.

So that I say it leads to a great deal of false hopes on the part of parents and others when a boy of theirs gets a suspended dishonorable discharge. They think he has a chance to work it out, and I want this record to show here that is not true. I think it is a shame that they go ahead and perpetuate that policy in any of the departments. I will say again I cannot say what is happening in the Navy on that, but I know that is happening in the Army, and somebody ought to do something about it.

Colonel DINSMORE. In answer to Mr. Elston's question, if a dishonorable discharge has been suspended and it is determined later to put the man back on duty, he simply is restored to duty to complete the unexpired term of his enlistment. If the dishonorable discharge has been carried into effect, the Secretary has statutory authority to authorize his reenlistment notwithstanding his dishonorable discharge, and that, of course, is a new enlistment completely.

Mr. ELSTON. What is the general policy where they do reenlist with dishonorable discharges hanging over their heads? Do they, as a rule, set that aside if he makes a good record?

Colonel DINSMORE. No, sir; that is a historical fact, and that discharge that is on record can never be wiped out. If he completes his new enlistment honorably, he gets an honorable discharge at the end of that enlistment.

Mr. ELSTON. Then he has both?

Colonel DINSMORE. Yes. But he has a white paper, in a way, and nobody asks him about anything except his last discharge.

Mr. ELSTON. Is that the case when they go in for reenlistment?

Colonel DINSMORE. I doubt if it is.

Mr. SMART. It would be illuminating for this committee to know how many Army enlisted men, who have been convicted since January 1946, of offenses which are considered to be felonious, have been permitted to reenlist. I'll bet you could count them on one hand.

Mr BROOKS. Why could not we get those figures? Would not they be available, Colonel?

Colonel DINSMORE. Yes; they would be vailable.

Mr. BROOKS. I wonder if they would be available in the Navy. Do you think you could get them?

Captain WOODS. I do not think we have quite the same situation in the Navy. I think our probations are granted in good faith, and if a man completes his probation period, he gets his honorable discharge, providing the rest of his service entitles him to it.

Mr. SMART. Is that regardless of the type of offense?

Captain WOODS. It varies.

Mr. SMART. I subscribe to that. That is what I think is the proper policy.

Mr. DEGRAFFENRIED. Do your remarks this morning "when they have been permitted to reenlist" refer to the ones who have been tried under existing law pertaining to the armed services or those who have been tried to civil courts, too?

Mr. SMART. Under military law, once a man has been released to the civil authorities and subsequently convicted, I think inevitably the military will drop from the rolls of the service the man who is in a civilian penal institution.

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Mr. DEGRAFFENRIED. But after he gets out, are they more lenient about taking him back into the service or letting him reenlist than if he were convicted under military law?

Mr. SMART. I just could not answer that but I doubt it.

Colonel DINSMORE. I am not sure I understand the question.

Mr. DEGRAFFENRIED. Are they more willing to let a man reenlist in the Army who has been tried and convicted in a civil court, say for grand larceny, than they would be if he had been convicted in a military court?

Colonel DINSMORE. I think there would be no difference.

Mr. Chairman, if I followed Mr. Smart correctly, his remarks were addressed to the question as to whether or not a dishonorable discharge ought to be suspended in a felony case. I am sure Mr. Smart would not suggest that the Army ought to be forced to enlist felons. We would not take them in the first instance, and we certainly would not enlist them after they had been convicted by a military court.

Mr. SMART. I do not subscribe to the theory that every man who is convicted of a felony is hopelessly lost. I do not think it is true. While I will concede as to the great majority of them, that you are correct, Colonel, and you do not want them back in the service, but to make that a matter of ironclad policy, without exception, I think is carrying it too far.

Mr. LARKIN. Did I understand the captain to say that the Navy does take them back?

Captain WOODS. That is correct.

Colonel CURRY. This is a memorandum which was sent to Mr. Larkin under date of March 2 in answer to a questionnaire which I understood originated after discussion with Mr. Smart, who asked what the service's policy was about restoration, and after you wrote it I checked with Captain McGinnis' civilian assistant, and he says this is essentially correct:

> Each case is decided on its own merits, after a man has been observed in confinement. A period of probation prior to this time is a serious error, as the prisoner does not have to strive to make good.

I might interject, that means if he goes to prison knowing he is going to be restored, he just does enough to get by. It does not mean that he cannot be put on probation immediately without confinement if the convening authority thinks that is proper.

> There is no statutory or general policy which would prevent reenlistment—

that is, if he has been discharged—

> or restoration on probation or even discharge. A waiver can be granted if a man meets the currently prescribed standards for enlistment, physically, morally, etc. Those who would be excluded are for the most part subversives.

I might say it means where we have convincing evidence that a man is seriously of that character, that he has declared himself and intends it to be taken seriously and is not just idle talk.

"A hopeless recidivist," that is to say a man who has repeated the offense so often that we are just forced to give him up; "a psychopath", that means a man who we are told by the doctors, on a medical survey, is a psychopath; "and without psychosis"—if he is insane, he is a candidate for medical survey—"a homosexual," and when I say that, I again mean a man who is definitely established as such; maybe he was tried for something else, such as robbery, and it was

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thrown out, then we do not want to keep him if we know he is a homosexual, just because the robbery conviction would not stand up. Now, as I say, if he is a mental case, the fact that he is a homosexual does not deprive him of a medical survey based on the ground that he is not responsible for his action.

Mr. BROOKS. Thank you very much. I think that is clear.

Is there any further discussion on this article? I think we have covered it fairly thoroughly. If there is no further discussion, then the article will stand approved.

Next is article 76.

Mr. SMART (reading):

ART. 76. Finality of court-martial judgments.

The appellate review of records of trials provided by this code, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this code, and all dismissals and discharges carried into execution pursuant to sentences by courts-martial following approval, review, or affirmation as required by this code, shall be final and conclusive, and orders publishing the proceedings of courts-martial and all action taken pursuant to such proceedings shall be binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in article 73 and to action by the Secretary of a Department as provided in article 74.

References: A. W. 50 (h).

Commentary: This article is derived from A. W. 50 (h) and is modified to conform to terminology used in this code.

Mr. BROOKS. What about "subject to Executive clemency"?

Mr. LARKIN. That is article 74, I think. We have specifically made it not final in the sense that it would bind a Secretary and prevent him from exercising further clemency.

Mr. BROOKS. What about the President?

Mr. LARKIN. I think probably the President has the power under the Constitution and the only provision, the only type of case that goes to the President automatically for approval is the death sentence in the case of a general or flag officer. In that case, it cannot be approved until he himself acts. Other than that, this applies.

Mr. BROOKS. There is nothing we can do to take away any constitutional authority from the President?

Mr. LARKIN. No, sir.

Mr. ELSTON. Do you think it is clear enough to include the authority of the President that he now has under the law?

Mr. LARKIN. Yes; I do.

Mr. ELSTON. Exclusive of his constitutional authority? You see, the section does not refer to the President; it only refers to the Secretary of the Department as provided in article 74.

Mr. LARKIN. I think it is sufficient. He has to take approving action under specific proceedings that are set up, and this says "all action taken pursuant to such proceedings." This stems from article of war 50, subparagraph (h), which does not mention the President and, as a matter of fact, did not except the clemency power of the Secretary as we have.

I believe there might be some question now under article of war 50 (h) whether the penalty prescribed there, as here, may be binding on the Secretary. We have put it in to make sure that his clemency power is not so restricted by this provision for finality.

Mr. ELSTON. Remember we use the words here "subject only to action upon a petition for a new trial as provided in article 73 and to

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action by the Secretary of a Department as provided in article 74." Now, those are the only exceptions.

Mr. DEGRAFFENRIED. Would it hurt anything if we add the words "or by the President"?

Mr. LARKIN. It would reaffirm whatever constitutional powers he has. Normally, I do not believe the President, after he approves a case, thereafter continues to exercise clemency. To put it another way, in all of these cases which become final without his approval, I do not believe that he normally steps in and exercises any further clemency, but it is left to the Department Secretary.

Mr. BROOKS. Would it not do a little more than that; would it not reaffirm the statutory authority of the President?

Mr. LARKIN. I see no harm in putting in the President, as to any further clemency power he may have.

Mr. BROOKS. How would you frame that? Would you just say "action by the Secretary of a Department as approved in article 74 and the authority of the President"?

Mr. LARKIN. I believe that would do it. I would like to check it.

Mr. BROOKS. I make that as a motion, subject to check which Mr. Larkin will make. Is there any objection to the amendment? If not, the amendment is adopted.

Is there any further discussion of article 76? If not, then article 76 stands approved.

Mr. SMART. Mr. Chairman, may I point out we have now completed the reading of articles 1 through 76, except article 67, the Judicial Council, and, of course, the punitive articles of war which are 77 to 134, inclusive.

Mr. BROOKS. I would suggest this, if the committee agrees with me, that we take up part X as a whole for such comments as Mr. Larkin and you have to make on the whole part. Then, if the committee wants to go to any one article in part X, we can discuss that.

These definitions, as I understand, are based on statutory definitions and have been worked out, and unless the committee wants to go over each one of them individually, it would seem to me that would be proper.

Mr. SMART. I think that would be entirely appropriate, Mr. Chairman, first including in the record the text of the article plus the comments on the article, as is shown in the book which you have, and then let the committee probe on any individual punitive article they may wish.

Mr. BROOKS. If there is no objection to that suggestion, the text of the article, together with the comments, as set forth in the annotation which the committee has been using will be spread on the record of the hearing.

(The matter above referred to is as follows:)

PART X.—PUNITIVE ARTICLES

"ART. 77. Principals.

"Any person punishable under this code who—

"(1) commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

"(2) causes an act to be done, which if directly performed by him would be punishable by this code;

shall be punished with the punishment provided for the commission of the offense."

References.—Title 18, U. S. C., section 2 (1948); M. C. M., paragraph 27; N. C. & B., section 41.

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Commentary.—At present the subject matter of this provision is prescribed by regulations or provided for in individual offenses.

"ART. 78. Accessory after the fact.

"Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial or punishment shall be punished as a court-martial may direct."

References.—A. G. N., article 8 (17); title 18, U. S. C., section 3 (1948); N. C. & B., section 41.

Commentary.—The language of this article is derived from title 18, U. S. C., section 3, and conforms to present Army and Navy practice.

"ART. 79. Conviction of lesser included offense.

"An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein."

References.—Proposed A. G. N., article 28 (a) (2); Federal Rules of Criminal Procedure, rule 31 (c).

Commentary.—At present this provision is prescribed by regulations. The language of the proposed text is derived from the Federal Rules of Criminal Procedure.

"ART. 80. Attempts.

"(a) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending but failing to effect its commission, is an attempt to commit that offense.

"(b) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

"(c) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated."

References.—A. W. 96; proposed A. G. N., article 9 (62); N. C. & B., section 42, 43.

Commentary.—An attempt to commit an offense is now punished under the general articles in cases where it is not specifically set forth.

Subdivision (c) is applicable only to a trial where the charge alleges an attempt to commit an offense, and not to a trial upon a charge for the offense itself.

"ART. 81. Conspiracy.

"Any person subject to this code who conspires with any other person or persons to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct."

References.—Proposed A. G. N., article 9 (62); title 18, U. S. C. section 371 (1948); N. C. & B., section 112.

Commentary.—This article is derived from title 18, U. S. C. section 371.

"ART. 82. Solicitation.

"(a) Any person subject to this code who solicits or advises another or others to desert in violation of article 85 or mutiny in violation of article 94 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

"(b) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of article 99 or sedition in violation of article 94 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct."

References.—Proposed A. G. N., article 9 (62).

Commentary.—Subdivision (a) makes it clear that one who solicits or advises another to violate the articles specified shall be guilty of an offense under this code. However, where the solicitation or advice results in the offense being consummated or attempted, the solicitor shall be punished as a principal, and the death penalty may be imposed.

In subdivision (b) where the solicitation or advice does not result in the consummated offense, the death penalty is not authorized.

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"ART. 83. Fraudulent enlistment, appointment, or separation.

"Any person who—

(1) procures his own enlistment or appointment in the armed forces by means of knowingly false representations or deliberate concealment as to his qualifications for such enlistment or appointment and receives pay or allowances thereunder; or

"(2) procures his own separation from the armed forces by means of knowingly false representations or deliberate concealment as to his eligibility for such separation;

shall be punished as a court-martial may direct."

References.—A. W. 54; A. G. N., article 22 (b); proposed A. G. N., article 9 (34).

Commentary.—Paragraph (1) is in substance the same as A. W. 54, with the addition of one who procures his own "appointment" by fraudulent means, thus making it applicable to officers as well as enlisted persons.

Paragraph (2) incorporates proposed A. G. N. 9 (34) which relates to one who procures his own "separation" by fraudulent means.

"ART. 84. Unlawful enlistment, appointment, or separation.

"Any person subject to this code who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct."

References.—A. W. 55; A. G. N., article 195; proposed A. G. N., article 9 (38).

Commentary.—This article is derived from A. W. 55. The scope of the article has been enlarged to include all persons subject to the code, instead of being limited to officers. Unlawful appointments or separations have been added to conform to article 83.

"ART. 85. Desertion.

"(a) Any member of the armed forces of the United States who—

"(1) without proper authority goes or remains absent from his place of service, organization, or place of duty with intent to remain away therefrom permanently; or

"(2) quits his unit or organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

"(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact he has not been so regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

"(b) Any officer of the armed forces who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

"(c) Any person found guilty of desertion or attempted desertion shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempted desertion occurs at any other time, by such punishment, other than death, as a court-martial may direct."

References.—A. W. 28, 58; A. G. N., articles 10, 4 (6), 8 (21); proposed A. G. N., articles 8 (3), 9 (31), 10 (b).

Commentary.—This article consolidates all provisions relating to desertion. Paragraph (1) of subdivision (a) sets forth the elements of desertion, in order to clearly distinguish desertion from a.w.o.l. Paragraphs (2) and (3) of subdivision (a), and subdivision (b) are derived from A. W. 28.

A. W. 59 (advising or aiding another to desert) and A. W. 60 (entertaining a deserter) have been deleted, as they are now covered by article 77 (principals) and 78 (accessory after the fact), respectively.

"ART. 86. Absence without leave.

"Any person subject to this code who, without proper authority—

"(1) fails to go to his appointed place of duty at the time prescribed; or

"(2) goes from that place; or

"(3) absents himself or remains absent from his unit, organization, or other place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct."

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References.—A. W. 61; A. G. N., articles 8 (19), 8 (46), 4 (9); proposed A. G. N., article 9 (29).

Commentary.—This article is based on A. W. 61. The words "fails to go" have been substituted for the words "fails to repair", in conformity with the policy of avoiding technical terms wherever possible.

"ART. 87. Missing movement.

"Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct."

References.—A. W. 61; proposed A. G. N., article 9 (57).

Commentary.—This article is taken from propsed A. G. N., article 9 (57) and is, in effect, an aggravated form of absence without leave as set forth in A. W. 61.

"ART. 88. Disrespect towards officials.

"Any officer who uses contemptuous or disrespectful words against the President, Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a governor or a legislature of any State, Territory, or other possession of the United States in which he is on duty or present shall be punished as a court-martial may direct."

References.—A. W. 62; proposed A. G. N., article 9 (47).

Commentary.—This article is derived from A. W. 62. The scope has been enlarged to include the Secretary of Defense and the Secretaries of the Departments. The phrase "shall be dismissed from service" has been deleted as the same punishment can be adjudged under the phrase "shall be punished as a court-martial may direct." This article applies to officers only.

"ART. 89. Disrespect towards superior officer.

"Any person subject to this code who behaves with disrespect towards his superior officer shall be punished as a court-martial may direct."

References.—A. W. 63; A. G. N., article 8 (6); proposed A. G. N., article 9 (16).

Commentary.—This article is derived from A. W. 63. Superior officer shall be given the meaning set forth in article 1.

"ART. 90. Assaulting or willfully disobeying officer.

"Any person subject to this code who—

"(1) strikes his superior officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

"(2) willfully disobeys a lawful command of his superior officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct."

References.—A. W. 64; A. G. N., articles 4 (2), 4 (3), 4 (15); proposed A. G. N., articles 9 (13), 9 (50), 8 (10).

Commentary.—This article is derived from A. W. 64. The punishment has been modified so that the death penalty can be imposed only when the offense is committed in time of war.

"ART. 91. Insubordinate conduct towards noncommissioned officer.

"Any warrant officer or enlisted person who—

"(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while such officer is in the execution of his office; or

"(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

"(3) treats with contempt or is disrespectful in language or deportment towards a warrant officer, noncommissioned officer, or petty officer while such officer is in the execution of his office;

shall be punished as a court-martial may direct."

References.—A. W. 65; A. G. N., Article 4 (2); proposed A. G. N., articles 9 (13), 9 (50).

Commentary.—This article is derived from A. W. 65. The scope of the provision has been enlarged to include warrant officers. The attempt provision has been deleted as it is now covered by article 80. "Petty officer" has been added to take care of Navy terminology.

"ART. 92. Failure to obey order or regulation.

"Any person subject to this code who—

"(1) violates or fails to obey any lawful general order or regulation; or

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"(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the same; or

"(3) is derelict in the performance of his duties;

hall be punished as a court-martial may direct."

References.—A. W. 96; proposed A. G. N., article 9 (30), 9 (19).

Commentary.—This article is derived from proposed A. G. N. 9 (30) and 9 (19). Inder present Army practice a violation of this provision would be charged under A. W. 96.

'ART. 93. Cruelty and maltreatment.

"Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of any person subject to his orders shall be punished as a court-martial may direct."

References.—Proposed A. G. N., article 9 (12).

Commentary.—This article is derived from proposed A. G. N. 9 (12). The present Army practice is to handle an offense of this nature under A. W. 96.

"ART. 94. Mutiny or sedition.

"(a) Any person subject to this code—

"(1) who with intent to usurp or override lawful military authority refuses, in concert with any other person or persons, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

"(2) who with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person or persons, revolt, violence, or other disturbance against such authority is guilty of sedition;

"(3) who fails to do his utmost to prevent and suppress an offense of mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior or commanding officer of an offense of mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

"(b) A person who is found guilty of attempted mutiny, mutiny, sedition or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct."

References.—A. W. 66, 67; A. G. N., articles 4 (1), 8 (8); proposed A. G. N., articles 8 (1), 9 (18).

Commentary.—This article consolidates A. W. 66 and 67, and sets forth the elements required to constitute the offense of mutiny or sedition.

The death penalty has been removed for the offense of attempted sedition. The words "excites, causes, or joins" have been omitted as unnecessary because such persons are principals under article 77.

"ART. 95. Arrest and confinement.

"Any person subject to this code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct."

References.—A. W. 69; proposed A. G. N., article 9 (50).

Commentary.—This article covers the punitive aspect of A. W. 69. That part omitted is now covered by article 10.

The distinction between officers, cadets and enlisted persons has been removed. The article now applies to all persons, and the punishment shall be as a court-martial may direct.

"ART. 96. Releasing prisoner without proper authority.

"Any person subject to this code who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct."

References.—A. W. 73; proposed A. G. N., article 9 (28).

Commentary.—This article is derived from A. W. 73, and is in accord with the comparable Navy provision.

"ART. 97. Unlawful detention of another.

"Any person subject to this code who, except as provided by law, apprehends, arrests or confines any person shall be punished as a court-martial may direct."

References.—Proposed A. G. N., article 9 (51).

Commentary.—This article should be read in conjunction with articles 7 and 9, wherein those persons authorized to apprehend, arrest or confine are set forth.

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"ART. 98. Noncompliance with procedural rules.

"Any person subject to this code who—

"(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

"(2) knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct."

References.—A. W. 70.

Commentary.—Paragraph (1) of this article embodies the substance of A. W. 70. The scope of A. W. 70 is enlarged to include persons other than officers.

Paragraph (2) is new, and is intended to enforce procedural provisions of this code, for example, article 37 (unlawfully influencing action of court) and article 31 (compulsory self-incrimination).

"ART. 99. Misbehavior before the enemy.

"Any member of the armed forces who before or in the presence of the enemy—

"(1) runs away; or

"(2) shamefully abandons, surrenders or delivers up any command, unit, place or military property which it is his duty to defend; or

"(3) through disobedience, neglect or intentional misconduct endangers the safety of any such command, unit, place, or military property; or

"(4) casts away his arms or ammunition; or

"(5) is guilty of cowardly conduct; or

"(6) quits his place of duty to plunder or pillage; or

"(7) causes false alarms in any command, unit, or place under control of the armed forces; or

"(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing which it is his duty so to encounter, engage, capture or destroy; or

"(9) does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct."

References.—A. W. 75; A. G. N., article 4 (12–20); proposed A. G. N., article 8 (7–15).

Commentary.—This article incorporates comparable Army and Navy provisions. The phrase "or speaks words inducing others" has been deleted from A. W. 75 as unnecessary in view of article 77 and 82.

"ART. 100. Subordinate compelling surrender.

"Any person subject to this code who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct."

References.—A. W. 76; A. G. N., article 4 (12); proposed A. G. N., article 8 (7).

Commentary.—This article consolidates A. W. 76 and proposed A. G. N., article 8 (7).

"ART. 101. Improper use of countersign.

"Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct."

References.—A. W. 77; proposed A. G. N., article 9 (48).

Commentary.—This article is derived from A. W. 77. The words "to his knowledge" have been added, to cover the situation where a person misunderstands the countersign or parole given to him.

"ART. 102. Forcing a safeguard.

"Any person subject to this code who forces a safeguard shall suffer death or such other punishment as a court-martial may direct."

References.—A. W. 78.

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Commentary.—This article is derived from A. W. 78. The words "in time of war" have been deleted to cover the situation where it is necessary to impose a safeguard, as in circumstances amounting to a state of belligerency, but where a formal state of war does not exist.

"ART. 103. Captured or abandoned property.

"(a) All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

"(b) Any person subject to this code who—

"(1) fails to carry out the duties prescribed in subdivision (a) of this article; or

"(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

"(3) engages in looting or pillaging;

shall be punished as a court-martial may direct."

References.—A. W. 79, 80; proposed A. G. N., article 9 (37); A. G. N., article 8 (16).

Commentary.—This article consolidates A. W. 79 and 80. Paragraph (3) of subdivision (b) is added as it was felt that conduct of this nature should be specifically covered.

"ART. 104. Aiding the enemy.

"Any person who—

"(1) aids, or attempts to aid the enemy with arms, ammunition, supplies, money or other thing; or

"(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with, or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct."

References.—A. W. 81; A. G. N., article 4 (5), 4 (4); proposed A. G. N., article 8 (2).

Commentary.—This article is derived from A. W. 81. Paragraph (2) enlarges A. W. 81 by the addition of the phrase "holds any intercourse with the enemy."

"ART. 105. Misconduct as prisoner.

"Any person subject to this code who, while in the hands of the enemy in time of war—

"(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

"(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct."

References.—None.

Commentary.—This article is new, and stems from abuses of this nature arising out of World War II.

"ART. 106. Spies.

"Any person who in time of war is found lurking or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces of the United States, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death."

References.—A. W. 82; A. G. N., article 5; proposed A. G. N., article 8 (16).

Commentary.—This article is derived from A. W. 82. The scope of the article has been enlarged in view of the importance of industrial plants, and other manufacturing units engaged in the war effort.

"ART. 107. False official statements.

"Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order or other official document, knowing the same to

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be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct."

References.—A. W. 56, 57; A. G. N., article 8 (14); proposed A. G. N., article 9 (24).

Commentary.—This article consolidates A. W. 56 and 57. It is broader in scope in that it is not limited to particular types of documents, and its application includes all persons subject to this code.

The article extends to oral statements, and the mandatory dismissal for officers has been deleted.

"ART. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition.

"Any person subject to this code who, without proper authority—

"(1) sells or otherwise disposes of; or

"(2) willfully or through neglect damages, destroys, or loses; or

"(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct."

References.—A. W. 83, 84; A. G. N., article 8 (15); proposed A. G. N., article 9 (20), 9 (21), 9 (25).

Commentary.—This article consolidates A. W. 83 and 84. It removes the distinction between issued and nonissued military property, and applies to all persons subject to the code.

"ART. 109. Property other than military property of United States—Waste, spoil, or destruction.

"Any person subject to this Code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct."

References.—A. W. 89.

Commentary.—This article is derived from A. W. 89. The provisions relating to behavior, reparation, and riot have been deleted.

The reparation aspect is now handled by article 139 and the riots by article 116

"ART. 110. Improper hazarding of vessel.

"(a) Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

"(b) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct."

References.—A. G. N., articles 4 (10), 8 (11); proposed A. G. N., articles 8 (6), 9 (21).

Commentary.—This article is derived from proposed A. G. N., articles 8 (6) and 9 (21).

"ART. 111. Drunken or reckless driving.

"Any person subject to this code who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct."

References.—Proposed A. G. N., articles 9 (53), 9 (54).

Commentary.—It is intended that the word "drunk" as used in this article, and in articles 112 and 113, shall have the same meaning as set forth in the M. C. M. paragraph 173, to wit: "Whether the drunkenness was caused by liquor or drugs is immaterial; and any intoxication which is sufficient sensibly to impair the rational and full exercise of the mental and physical faculties is drunkenness within the meaning of this article."

"ART. 112. Drunk on duty.

"Any person subject to this code, other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct."

References.—A. W. 85; A. G. N., article 8 (1); proposed A. G. N., articles 9 (53), 9 (55).

Commentary.—This article is derived from A. W. 85. The phrase "other than a sentinel or look-out" has been added, as a sentinel or look-out found drunk on duty is guilty of a separate and distinct offense under article 113.

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"ART. 113. Misbehavior of sentinel.

"Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct."

References.—A. W. 86; A. G. N., articles 4 (8), 4 (9); proposed A. G. N., articles 8 (5), 8 (9), 9 (29).

Commentary.—The language used in this article is substantially that of A. W. 86. The word "look-out" has been added to cover Navy terminology.

"ART. 114. Dueling.

"Any person subject to this Code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct."

References.—A. W. 91; A. G. N., article 8 (5); proposed A. G. N., article 9 (15).

Commentary.—The provision regarding dismissal of officers found guilty of the offense of dueling has been deleted as superfluous.

"ART. 115. Malingering.

"Any person subject to this code who for the purpose of avoiding work, duty, or service—

"(1) feigns illness, physical disablement, mental lapse, or derangement; or

"(2) intentionally inflicts self-injuty;

shall be punished as a court-martial may direct."

References.—Proposed A. G. N., articles 9 (55), 9 (56); N. C. and B., section 104.

Commentary.—This article consolidates proposed A. G. N., articles 9 (55) and 9 (56).

"ART. 116. Riot or breach of peace.

"Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct."

References.—A. W. 89; A. G. N., article 22 (a); N. C. and B., section 92.

Commentary.—The language of this article is new. It is derived from A. W. 89, and is set forth specifically as it is not within the purview of article 109.

"ART. 117. Provoking speeches or gestures.

"Any person subject to this code who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct."

References.—A. W. 90; proposed A. G. N., article 9 (13).

Commentary.—This article is derived from A. W. 90 and proposed A. G. N., article 9 (13).

"ART. 118. Murder.

"Any person subject to this code who, without justification or excuse, kills a human being, when he—

"(1) has a premeditated design to kill; or

"(2) intends to kill or inflict great bodily harm; or

"(3) is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or

"(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson, though he has no intent to kill;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under paragraph (1) of this article, he shall suffer death or imprisonment for life as a court-martial may direct."

References.—A. W. 92; A. G. N., article 6.

Commentary.—Under paragraph (1) there must be not only an intent to kill, but there must also be a premeditated design to kill.

Under paragraph (2) intent to inflict great bodily harm has been held to satisfy the "malice aforethought" requirement.

Paragraph (3) is a codification of the well-settled common-law rule that, even in the absence of a specific intent to kill or inflict serious bodily harm, the homicide is murder if the offender's conduct was imminently dangerous to others and evinced a wanton disregard of human life. It is intended to cover those cases where the acts resulting in death are calculated to put human lives in jeopardy, without being aimed at any one in particular.

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Paragraph (4) adopts a restricted view of the felony-murder doctrine. Its application is limited to the more serious and dangerous offenses.

It is intended that the common-law "year and a day" rule shall not be applicable. In early times, when the rule originated, it was difficult to ascertain the true cause of death if a substantial period of time intervened. With modern developments in medical science the only justification for this rule no longer exists.

The territorial limitation in peacetime has been removed, thus allowing the armed forces to try murder and rape cases in all places, and at all times.

"ART. 119. Manslaughter.

"Any person subject to this code who, without a design to effect death, kills a human being—

"(1) in the heat of sudden passion; or

"(2) by culpable negligence; or

"(3) while perpetrating or attempting to perpetrate an offense, other than those specified in paragraph (4) of article 118, directly affecting the person:

is guilty of manslaughter and shall be punished as a court-martial may direct."

References.—A. W. 93; N. C. and B., section 119.

Commentary.—Paragraph (1) conforms to the offense which is usually labelled voluntary manslaughter. Paragraph (2) covers that type of involuntary manslaughter where the homicide results from criminal negligence. Paragraph (3) obviates the necessity of distinguishing offenses malum in se and malum prohibitum. The phrase "directly affecting the person" is intended to apply to those offenses affecting some particular person as distinguished from an offense affecting society in general, such as general safety regulations.

"ART. 120. Rape.

"(a) Any person subject to this code who commits an act of sexual intercourse with a female not his wife, by force and without her consent, is guilty of rape. Penetration, however slight, is sufficient to complete the offense.

"(b) Any person found guilty of rape shall be punished by death or such other punishment as a court-martial may direct."

References.—A. W. 92; A. G. N., article 22 (a).

Commentary.—The geographical limitation in time of peace contained in A. W. 92 has been deleted.

"ART. 121. Larceny.

"Any person subject to this code who, with intent to deprive or defraud another of the use and benefit of property or to appropriate the same to his own use or the use of any person other than the true owner, wrongfully takes, obtains, or withholds, by any means whatever, from the possession of the true owner or of any other person any money, personal property, or article of value of any kind, steals such property and is guilty of larceny, and shall be punished as a court-martial may direct."

References.—A. W. 93; proposed A. G. N., articles 9 (43), 9 (41).

Commentary.—This article is intended to combine the offenses of larceny by asportation, larceny by trick and device, obtaining property by false pretenses, and embezzlement. It is desirable to eliminate the technical distinctions which have heretofore differentiated one type of theft from another and is in keeping with modern civil trends.

"ART. 122. Robbery.

"Any person subject to this code who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct."

References.—A. W. 93; N. C. and B., section 123.

Commentary.—This article conforms basically to the common-law definition of "robbery." The phrase "anything of value" was preferred to "property," in order to obviate the difficulties of the common-law interpretations. The class of persons menaced has been enlarged.

"ART. 123. Forgery.

"Any person subject to this code who, with intent to defraud—

"(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

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"(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct."

References.—A. W. 93; proposed A. G. N., article 9 (39).

Commentary.—This article combines forgery and uttering a forged instrument. The basic common-law elements have been incorporated.

"ART. 124. Maiming.

"Any person subject to this code who with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

"(1) seriously disfigures his person by any mutilation thereof; or

"(2) destroys or disables any member or organ of his body; or

"(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct."

References.—A. W. 93; N. C. & B., section 122.

Commentary.—This article is broader in scope than common-law mayhem. It includes injuries which would not have the effect of making a person less able to fight.

"ART. 125. Sodomy.

"(a) Any person subject to this code who engages in unnatural carnal copulation with another of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

"(*b*) Any person found guilty of sodomy shall be punished as a court-martial may direct."

References.—A. W. 93; proposed A. G. N., article 9 (39); N. C. & B., section 108.

Commentary.—This article covers the same elements as the Army and Navy definition of this offense.

"ART. 126. Arson.

"(a) Any person subject to this code who willfully and maliciously burns or sets on fire a dwelling in which there is at the time a human being, or any other structure, water craft, or movable, wherein to the knowledge of the offender there is at the time a human being is guilty of aggravated arson and shall be punished as a court-martial may direct.

"(b) Any person subject to this code who willfully and maliciously burns or sets fire to the property of another, except as provided in subdivision (a) of this article, is guilty of simple arson and shall be punished as a court-martial may direct."

References.—A. W. 93; N. C. & B., section 124.

Commentary.—This article divides arson into two categories. Subdivision (a) is essentially common-law arson, but is enlarged to cover structures other than dwellings, in view of the fact that the essence of the offense is danger to human life. In subdivision (b) the offense is essentially one against the property of someone other than the offender.

"ART. 127. Extortion.

"Any person subject to this code who communicates threats to another with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity of any description is guilty of extortion and shall be punished as a court-martial may direct."

References.—A. W. 96; proposed A. G. N., article 9 (42); N. C. and B., section 93.

Commentary.—This article combines extortion and blackmail.

"ART. 128. Assault.

"(a) Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

"(b) Any person subject to this code who—

"(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

"(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct."

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References.—A. W. 93; N. C. and B., section 48.

Commentary.—This article is divided into two categories. Subdivision (a defines a simple assault. Subdivision (b) sets forth the elements of aggravated assault.

This article differs from present service practice in that assaults with intent to commit specific crimes have been eliminated. Such assaults could be punished under article 80 (attempts), or, if the intent is doubtful, under this article.

"ART. 129. Burglary.

"Any person subject to this code who, with intent to commit an offense punishable under articles 118 through 128, inclusive, breaks and enters, in the nighttime the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct."

References.—A. W. 93; proposed A. G. N., article 9 (39).

Commentary.—This article includes all the elements of common law burglary. The intent to commit a felony has been limited to those offenses specified.

"ART. 130. Housebreaking.

"Any person subject to this code who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct."

References.—A. W. 93; proposed A. G. N., article 9 (39); M. C. M., paragraph 179 (e).

Commentary.—This article is adopted from M. C. M., paragraph 179 (e). The scope has been enlarged by the inclusion of the words "or structure of another."

"ART. 131. Perjury.

"Any person subject to this code who in a judicial proceeding or course of justice, willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct."

References.—A. W. 93; M. C. M., paragraph 180 (h); N. C. and B., section 115.

Commentary.—This article is derived from M. C. M., paragraph 180 (h), and is in substantial conformity with the Navy definition.

"ART. 132. Frauds against the Government.

"Any person subject to this code—

"(1) who, knowing it to be false or fraudulent—

"(A) makes any claim against the United States or any officer thereof; or

"(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof; or

"(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

"(A) makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements; or

"(B) makes any oath to any fact or to any writing or other paper knowing such oath to be false; or

"(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing the same to be forged or counterfeited; or

"(3) who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

"(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct."

References.—A. W. 94; A. G. N., articles 14 (1–10); proposed A. G. N., articles 9 (1–10).

Commentary.—This article has revised and rearranged the comparable Army and Navy provisions to eliminate repetitious and superfluous material.

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Reference to persons "causing, procuring, or advising" have been deleted in view of article 77 (principals). The conspiracy clause has been omitted as that offense is now covered by article 81. It is to be noted that an overt act to effect the object of the conspiracy is now required.

The provisions relating to embezzlement, stealing, misappropriation, and pledges have been omitted as the said offenses are now covered by article 121 (larceny) or article 108 (wrongful disposition of military property).

The continuing jurisdiction clause has been deleted, since a member of the armed forces who commits a fraud against the government, and who is thereafter discharged, is subject to prosecution in the Federal courts under general criminal statutes. See title 18 U. S. C., sections 1001 et seq. (1948).

"ART. 133. Conduct unbecoming an officer and gentleman

"Any officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the armed forces."

References.—A. W. 95.

Commentary.—This article is derived from A. W. 95. The word "midshipman" has been added to cover the Navy designation.

"ART. 134. General article.

"Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this code may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court."

References.—A. W. 96.

Commentary.—This article is derived from A. W. 96 and corresponds to A. G. N. article 22 (a).

PART XI—MISCELLANEOUS PROVISIONS

"ART. 135. Courts of inquiry.

"(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary of a Department for that purpose whether or not the persons involved have requested such an inquiry.

"(b) A court of inquiry shall consist of three or more officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

"(c) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed by the National Military Establishment who has a direct interest in the subject of inquiry shall have the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and shall have the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

"(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

"(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

"(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

"(g) Courts of inquiry shall make findings of fac tbut shall not express opinions or make recommendations unless required to do so by the convening authority.

"(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. In case the record can not be authenticated by the president it shall be signed by a member in lieu of the president and in case the record can not be authenticated by the counsel for the court it shall be signed by a member in lieu of the counsel."

References.—A. W. 97–103; proposed A. G. N., articles 42, 43, 44.

Commentary.—This article is a combination of Army and Navy provisions as to courts of inquiry. Army courts of inquiry, at present, may only be convened at the request of the person whose conduct is to be investigated. Naval courts of inquiry, however, may be convened for any formal investigation. Subdivision (a) grants this broader power.

Subdivision (b) does not change the number of members of courts of inquiry in either service, but does provide for a counsel whose duties are to assist the court in matters of law, presentation of evidence, and in the keeping of the record.

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Subdivision (c) adopts the substance of Proposed A. G. N., article 42. The provision in regard to employees of the National Military Establishment is included in order to allow employees whose conduct may be involved in the inquiry to intervene in order to protect their rights or reputations.

Subdivisions (d) and (e) conform to present Army and Navy practice.

Subdivision (f) is derived from A. W. 101. Under Navy practice witnesses may be but are not required to be sworn.

Subdivisions (g) and (h) conform to Army and Navy practice.

"ART. 136. Authority to administer oaths and to act as notary.

"(a) The following persons on active duty in the armed forces shall have authority to administer oaths for the purposes of military administration, including military justice, and shall have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, and by other persons subject to this code outside the continental limits of the United States:

"(1) All judge advocates of the Army and Air Force;

"(2) All law specialists;

"(3) All summary courts-martial;

"(4) All adjutants, assistant adjutants, acting adjutants and personnel adjutants.

"(5) All commanding officers of the Navy and Coast Guard;

"(6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and

"(7) All other persons designated by regulations of the armed forces or by statute.

"(b) The following persons on active duty in the armed forces shall have authority to administer oaths necessary in the performance of their duties:

"(1) The president, law officer, trial counsel, and assistant trial counsel of all general and special courts-martial;

"(2) The president and the counsel for the court of any court of inquiry;

"(3) All officers designated to take a deposition;

"(4) All persons detailed to conduct an investigation;

"(5) All recruiting officers; and

"(6) All other persons designated by regulations of the armed forces or by statute.

"(c) No fee of any character shall be paid to or received by any person for the performance of any notarial act herein authorized.

"(d) The signature without seal of any such person acting as notary, together with the title of his office, shall be prima facie evidence of his authority."

References.—A. W. 114; A. G. N., article 69; proposed A. G. N., article 47 (a).

Commentary.—This article is a combination and modification of A. W. 114 and A. G. N., article 69. Only certain persons specified are given notarial powers, as it is believed in appropriate that persons having temporary powers to administer oaths should notarize legal instruments which may have drastic legal consequences if incorrectly drawn. The persons specified in subdivision (a) are believed to have legal experience or experience in personnel matters. Commanding officers of the Navy and Coast Guard are included in subdivision (a) as Navy and Coast Guard commands do not have adjutants and personnel adjutants.

"ART. 137. Articles to be explained.

"Articles 2, 3, 7 through 15, 25, 27, 31, 37, 38, 55, 77 through 134, and 137 through 139 of this code shall be carefully explained to every enlisted person at the time of his entrance on active duty in any of the armed forces of the United States, or within six days thereafter. They shall be explained again after he has completed six months of active duty, and again at the time he reenlists. A complete text of the Uniform Code of Military Justice and of the regulations prescribed by the President thereunder shall be made available to any person on active duty in the armed forces of the United States, upon his request, for his personal examination."

References.—A. W. 110; A. G. N., article 20 (tenth).

Commentary.—This article is derived from A. W. 110, but requires the articles to be carefully explained instead of being read, as it is felt that a careful explanation is of more value than a mere reading. The language would also permit training films to be used to explain the code. The requirement that the code be read every six months is omitted as it is felt that a thorough indoctrination is more beneficial than a required reading every six months.

'ART. 138. Complaints of wrongs.

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"Any member of the armed forces who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to any superior officer who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. That officer shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department concerned a true statement of such complaint, with the proceedings had thereon."

References.—A. W. 121; United States Navy Regulations, article 99.

Commentary.—This article is adopted from A. W. 121. The Navy has provided a similar procedure by regulation.

"ART. 139. Redress of injuries to property.

"(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces he may, subject to such regulations as the Secretary of the Department may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three officers and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of such commanding officer directing charges herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the damages assessed and approved.

"(b) Where the offenders can not be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be deemed just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board."

References.—A. W. 105.

Commentary.—This article is a redraft of A. W. 105 with changes to permit the Secretary of the Department to prescribe the situations and procedures for redress. It is not intended to affect the provisions of 40 Stat. 705 (1918) as amended by 41 Stat. 132 (1919), 34 U. S. C., section 600 (1946), (claims for damages not occasioned by vessels) or the provisions of 28 U. S. C., section 2671 et seq. (1948), (tort claims) or similar enactments.

"ART. 140. Delegation by President.

"The President is authorized to delegate any authority vested in him under this code, and to provide for the subdelegation of any such authority."

References.—Public Law 759, Eightieth Congress, second session, section 10 (c) (June 24, 1948).

Commentary.—This article incorporates the language of the reference.

Mr. BROOKS. Mr. Larkin, would you give us your idea on part X—your general comment?

Mr. LARKIN. Part X includes from article 77 through article 134, the punitive articles. It sets out and defines the different offenses over which the uniform code has jurisdiction.

When we were studying the punitive articles as spelled out in the Articles of War and in the Articles for the Government of the Navy, we noticed some different offenses in one statute that were not in the other. We observed that the Articles of War, in the main, define the so-called military offenses. They did not define all of them but the most of them. The Articles for the Government of the Navy defined most of the military offenses but not all. There were some crimes that were peculiar to one service which were not provided for in another.

Going further, we noticed that most of the civil crimes or the civil types of crimes were not defined, and, in checking the definitions as

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spelled out in the respective manuals, we found some differences between them—not very many but a few.

The civil crimes in the Articles of War, as defined by the manuals, were generally the definitions in the common law, actually the common law of Maryland which, as a matter of fact, is very close to the Federal law definitions but is not identical.

The civil crimes in the Articles for the Government of the Navy were not defined, except that Naval courts and boards generally followed the Federal statutory definition; but to the extent that they provided some common law crimes which had never been made statutory, they followed the common law definition. There was enough variance, however, to lead us to the conclusion that since we were trying to draft punitive articles for the three services, we ought to define all of the offenses, and the civil crimes, as I have said, not having been defined in the statute before.

So we started from scratch and we examined each offense and tried to stick as closely as we could to the definition that was commonly used by both services and also to adopt whatever ideas we felt were worth-while from some of the more modern State codes. We considered adopting the Federal definition as defined in the Federal code, but, unfortunately, we found there were some offenses that were not defined there, either.

So we looked to all of these sources and relied on most of them and tried to select what we thought was the clearest definition for each of those offenses, sticking as closely as we could to what was commonly used as a definition by both of the services now or what was the latest definition in some of the more modern day penal laws.

In addition to that, we set out in the punitive articles in the beginning some general definitions which had heretofore not been statutory but which are set out in most of the modern penal codes. For instance, we drafted one definition for principals, for accessories after the fact, and for a provision of lesser included offense, for attempts and for conspiracy.

Mr. DEGRAFFENRIED. You really, in effect, have done away with the distinction between principals and accessories before the fact, have you not?

Mr. LARKIN. That is right; we have—and also a definition of solicitation. We have spelled those out in the code where heretofore they have not been in the Articles of War or Articles for the Government of the Navy and then have gone on with each of these crimes, keeping the major crimes that we found in each of the services and adding a few—I think just two—additional offenses which were not found before.

That was the general scheme which we followed.

If you care to address yourself to any individual definition of any offense, I will try to point out the source of it or point out the previous definition as used in either the Articles of War or the Articles for the Government of the Navy or both.

Mr. BROOKS. I would like to ask you this: suppose an offense is not defined under these punitive articles, is there any redress by court martial?

Mr. LARKIN. We have retained a general article, Article No. 134, which is similar to Article of War No. 96, and the Article for the Government of the Navy No. 22, so that offenses of—

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disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces—

is retained as it was provided in the Articles of War and in the Articles for the Government of the Navy. We have in a few instances made specific offenses out of conduct which heretofore was treated only by this general order, but otherwise it is the same.

We also have retained Article of War No. 95 and made it Article No. 133. That is conduct unbecoming an officer and a gentlemen.

Mr. ELSTON. What do you mean in section 134 when you say "and crimes and offenses not capital, of which persons subject to this code may be guilty"? I will go back a little further and start from the beginning.

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the Armed Forces, or conduct of a nature to bring discredit upon the Armed Forces, and crimes and offenses not capital, of which persons subject to this code may be guilty * * *.

To what crimes and offenses are you referring there—the ones defined in this code or other crimes and offenses?

Mr. LARKIN. It has been construed to be the offenses which are not spelled out but which are offenses under the Federal law. It is the same provision as is now found in article 96. Also, as Colonel Dinsmore reminds me, it may be an offense under a State law where the accused commits such an offense in that State.

Mr. ELSTON. So, as I understand it, any person in the military service who commits an act which is defined as a crime by a Federal or State law is subject to trial and punishment in the military courts for the commission of that offense?

Mr. LARKIN. That is right.

Mr. BROOKS. Going further, if a soldier, for instance, is out here in Washington and speeds, the military has full authority to punish him for speeding?

Mr. LARKIN. If it is an offense; yes.

Mr. BROOKS. Well, speeding is an offense in Washington.

Mr. LARKIN. I do not know. Sometimes it is a violation of an ordinance; it is not classified as an offense. But that would depend——

Mr. BROOKS. This would not be construed, then, to cover a violation of a city ordinance?

Mr. LARKIN. I do not believe so.

Colonel DINSMORE. I do not think so, Mr. Chairman.

Mr. BROOKS. But only a statutory offense; is that it?

Mr. LARKIN. The construction as to State laws should be clarified to this extent: I believe a violation of a State law would be punishable under the code to the extent it is construed as conduct to the prejudice of good order and discipline but not to the extent of the specific State law itself. We purposely want to avoid trying personnel who happen to commit an offense under State law, by virtue of the tremendous variations between State laws and by virtue of the necessity that would fall upon the court of trying them according to the procedural practices and perhaps even the substantive provisions of one State as against another. But, if the act is to the prejudice of good order and discipline, the fact that it also incidentally is a State law violation as well would bring it under this jurisdiction but not triable as the State would try it.

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Mr. ELSTON. It would necessarily include all cases involving moral turpitude.

Mr. LARKIN. I should say so; yes.

Mr. ELSTON. I am wondering where you got your definition of principals and the manner in which they should be punished.

Mr. LARKIN. That came I believe from title 18 of the United States Code, section 2. The only variation from that definition there is that in title 18, section 2, after these words, there are the additional words "is a principal." And by virtue of the fact that we were trying to word this as we did in the first sentence to include spies, for instance, who are not subject ordinarily to the code, we revised it a little and it was criticized I think by some witness—I believe Mr. L'Heuseux. Where it says "any person punishable under this code who commits an offense punishable," that seems to be redundant. But we consciously did it that way rather than saying "any person subject to this code who commits an offense punishable," because spies are not otherwise subject to this code. But, to answer your question specifically, it comes from the Federal Code.

Mr. ELSTON. The words "shall be punished with the punishment provided for the commission of the offense," does that come from the Federal Code?

Mr. LARKIN. The Federal Code says "as a principal," which means the same same thing.

Mr. ELSTON. I do not know whether it does or not. You limit the punishment of a principal or an accessory before the fact to the punishment provided for the commission of the offense that he aided another to commit.

Mr. LARKIN. That is right.

Mr. ELSTON. The law goes further than that. Suppose he aided someone to commit the crime of robbery and in the perpetration of the robbery a murder is committed; he not only should be punished for the offense that he aided the other to commit, but for any offense which might reasonably be expected to flow from the commission of the act intended.

Mr. LARKIN. He aids in the commission of a robbery, and murder flows from it. The person who committed, or who was the active agent in the robbery I assume becomes the one who commits the murder, and the accomplice is the principal for all purposes in the act of the active participant and, as such, he is a principal in the murder.

Mr. ELSTON. You do not say that, though. You say "shall be punished with the punishment provided for the commission of the offense."

Mr. LARKIN. Which in that case is murder.

Mr. ELSTON. But read up above. You say:

> Any person punishable under this code who—
> (1) commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission;

It seems to me you have got to go a little further than that or you are going to limit an aider or abetter to the offense committed, the offense that he aided another to commit, where he did not intend to commit the crime of murder, and intended only to commit the crime of robbery. He may have been a mile away from the scene of the crime; he may have furnished the weapon that was to be used in the commission of the robbery, but murder was committed, something

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that he did not intend. He may have advised against it but still, under the law, he would be guilty, because murder is something that might reasonably be expected to flow from the commission of the act that he thought was going to be committed.

Mr. LARKIN. Is that not true of the active principal who starts out with no intention of committing a murder but with the intention of committing a robbery and without intention to commit a murder, but, during the commission of the robbery, does so commit the murder?

Mr. ELSTON. That is understandable as to him; but the person who aided and abetted is limited, as your language seems to limit it, and might be punished only for the offense that he conspired to commit.

Mr. LARKIN. Of course, a conspirator is bound by all the acts of his coconspirators; is he not?

Mr. ELSTON. That is the theory of the law, but is it expressed here anywhere?

Mr. DEGRAFFENRIED. Mr. Larkin, is it true generally, under Federal law, that if a man were to plan, for example, with his confederates to break into a filling station at night and steal money from the cash register, but did not go with them to do it; but that when the crime was committed the night watchman, or somebody else, happened to come up and was killed by one of the people present, is it true under Federal law that that man, who is not on the scene of the crime, would be guilty of murder?

Mr. LARKIN. If you can prove he is part and parcel of the conspiracy, I think so. Is it not analogous to the case that where a principal or *his instiga*tor of a crime, or a procurer of a crime, hires a paid gunman, let us say, to go out and commit robbery, and he is not near the scene at all?

Mr. BROOKS. Gentlemen, I do not believe we can finish this before lunch. I am therefore going to suggest that we recess until 2 o'clock. Mr. Smart, for instance, has about 8 or 10 inquiries about these articles that should be covered.

Mr. LARKIN. Let us reserve judgment on that, Mr. Elston, and look up some of those cases. We shall try to do it very quickly. And, if it is not clear, I agree that we ought to correct it.

Mr. ELSTON. It is a very simple definition. Whoever aids, abets, procures another to commit an offense shall be charged and tried as a principal offender.

You have got them all, then.

Mr. BROOKS. If there is no objection, we shall recess until 2 o'clock.

(Whereupon the subcommittee took a recess until 2 p. m.)

AFTERNOON SESSION

The subcommittee reconvened at 2 p. m., Hon. Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will please come to order.

Mr. Larkin, since we recessed, have you and Mr. Smart gotten together on some suggestions of changes or interpretations of the articles?

Mr. LARKIN. Well, the one we were discussing, Mr. Chairman—namely, 77—I think would be cured or at least would meet the idea Mr. Elston had if we added the words, in line 80, page 65, "is a principal" and strike out the rest of the language on lines 8 and 9.

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But I think, since Mr. Elston raised the point, perhaps we ought to reserve the suggestions until he returns; and, if it meets with his approval, why I think——

Mr. BROOKS. We might wait a little bit. Suppose we do this: Take up the other articles and then come back to his suggestion before we adjourn.

Mr. LARKIN. Fine.

Mr. BROOKS. I think Mr. Elston told me he would be a little late.

Mr. LARKIN. All right.

Mr. BROOKS. But I think he will be right back.

Mr. SMART. Mr. Chairman, in view of the previous decision of the committee to more or less consider these punitive articles en bloc, I have no further questions up to article 106, which I think needs clarifying as to the meaning of the word "lurking" on page 77, line 3.

I find that the intent was that the word "lurking" would mean "lurking as a spy." So, I would suggest an amendment on line 3, page 77, after the word "lurking," insert "as a spy."

Mr. BROOKS. So it will read: "Any person who in time of war is found lurking as a spy"?

Mr. SMART. Yes, sir.

Mr. LARKIN. "or"—

Mr. BROOKS. "or acting as a spy"?

Mr. SMART. That is right. There is some doubt as to the advisability of striking out the word "lurking," because it has historical significance and has been in the military law for many, many years.

This would definitely clarify the meaning of the word "lurking."

Mr. BROOKS. Is there any objection to that? I do not believe there is.

Mr. DEGRAFFENRIED. No.

Mr. BROOKS. If there is no objection, then we will adopt that suggested amendment.

Now, is there any other comment on 106? Are there any comments on any of these other articles covering punitive provisions of the code?

Mr. DEGRAFFENRIED. There is just one question I would like to ask as a matter of information.

Mr. Larkin, do you have anything in military law at all that provides in any kind of serious case that an accused cannot be convicted on the uncorroborated testimony of an accomplice?

Mr. LARKIN. There is nothing in the statute that I know of.

Mr. DEGRAFFENRIED. We talk about these accessories and all, and I just wondered in a lot of jurisdictions that protection is thrown around the accused.

Mr. LARKIN. Captain Woods points out in the Navy they have heretofore provided that the uncorroborated testimony of an accomplice, for instance, is not sufficient. I would anticipate that that same rule will be preserved and continued in the uniform manual.

I believe it is the Federal rule and we tried to adhere as nearly as possible to that rule.

Colonel DINSMORE. Mr. Chairman, my recollection, and I speak subject to correction, is that our rule is that he may be convicted on the uncorroborated testimony of an accomplice but that such testimony will be received with great caution.

Mr. DEGRAFFENRIED. That is all.

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Mr. BROOKS. Any further questions?

Now, someone was telling me the other day, perhaps it was you Mr. Larkin, about a case arising in New York in which it was found, I think on a habeas corpus, that the service had no law to cover some very serious crime.

Do you recall that?

Mr. SMART. I think that is a Navy situation. I think that was a case which arose on one of the overseas islands where several sailors committed a murder.

In that situation, they were not attached to a ship and were not subject to capital punishment.

Captain WOODS. Is that the Saipan case?

Mr. SMART. Yes.

Captain WOODS. Yes. The point there was that our code provided that jurisdiction over murder pertained to outside the continental United States when attached to the ship.

These people were ashore and therefore we could not try them for murder.

So we had to retry them for manslaughter.

Mr. BROOKS. Now, is there anything in this code that takes care of that situation?

Captain WOODS. That takes care of it?

Mr. BROOKS. Under what article is that? That might be asked us on the floor.

Mr. SMART. That is article 118, "Murder." It does not restrict it as far as the territorial applicability of the code is concerned.

The code provides that it will be applicable in all places, so that covers ships, islands, continents, or whatever you have.

Mr. BROOKS. Mr. Elston has come in. We might turn back to that one particular matter that we were discussing, Mr. Larkin, and take that up and see whether or not your suggestion fits the situation now.

Mr. LARKIN. Well, as I pointed out, Mr. Chairman, I think this article if amended as follows——

Mr. BROOKS. What article is that, now?

Mr. LARKIN. Article 77, on page 65 will include the idea expressed by Mr. Elston. That is, on line 8, strike out all the words on that line and also on line 9 and substitute the words, "is a principal."

Mr. ELSTON. I do not quite get that. Where is that?

Mr. LARKIN. Page 65, Mr. Elston.

Mr. ELSTON. I have that.

Mr. LARKIN. Line 8.

Mr. ELSTON. Yes, strike everything on lines 8 and 9.

Mr. LARKIN. Yes, everything on lines 8 and 9?

Mr. ELSTON. Yes. So that starting with (2), it will say "causes an act to be done which if directly performed by him would be punishable by this code" and then drop to the next line, "is a principal."

So that in all those cases above he is a principal.

Mr. BROOKS. You do away with accessories completely?

Mr. LARKIN. No, sir. We just add to the end of that, "is a principal," which includes accessories before the fact.

Mr. BROOKS. Sure. I see what you mean there.

Mr. LARKIN. I think that cures the situation you had in mind, Mr. Elston.

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Mr. ELSTON. That is all right: "or shall be punished as a principal offender"; either one.

Mr. LARKIN. Well, I think this one does it, do you not think so?

Mr. ELSTON. "Is a principal" reaches it.

Mr. BROOKS. Let me ask you, then: It take in all cases of accessories before the fact?

Mr. ELSTON. That is right.

Mr. BROOKS. And 78 merely covers those after the fact?

Mr. ELSTON. That is right. We have obliterated the distinction between the accessories before the fact and the accomplice on the scene.

Mr. BROOKS. Any further comment on that particular article?

Is there not a new article on larceny or are there some changes in the old article on larceny?

Mr. SMART. That is article 121, Mr. Chairman.

Mr. BROOKS. Have you any comments you want to make on that?

Mr. LARKIN. Well, it has been observed, I believe, that it is not clear whether larceny under the provision of article 121 applies only if the intent to defraud or deprive a person of his property is a permanent deprivation.

I think that is perfectly true. It does not have to be a permanent one. It could be a temporary one as distinguished from permanent.

Mr. BROOKS. Would you say it takes in the case of embezzlement?

Mr. LARKIN. It does. The reason for this draft is to obliterate the distinction between larceny by trespass and trick and device and embezzlement and false pretenses.

Now, last year, in Public Law 759, this committee in its amendment to article of war 93, did erase the distinction between larceny and embezzlement. They did not go further and provide for false pretenses. This is an attempt to obliterate the technical distinction between not only larceny of both kinds, that is, trespass and trick and device, but embezzlement and false pretenses as well.

Since such a comprehensive article had not been defined in the statute of either the articles of war or the articles for the government of the Navy, nor was it defined by your committee last time we were of course forced to adopt a definition which we thought would do that.

Mr. BROOKS. But you have nothing here which indicates a crime of grand larceny?

Mr. LARKIN. No, sir.

Mr. BROOKS. As contrasted to petty larceny?

Mr. LARKIN. That is right. The military law has not had degrees of larceny in the fashion of civil courts where you have grand larceny in the first or second or third degree, depending upon the amounts.

Mr. BROOKS. Any questions, Mr. Elston?

Mr. ELSTON. Of course, you leave it to the court martial to affix such punishment as the court matrial may direct?

Mr. LARKIN. Exactly.

Mr. SMART. That is further limited, Mr. Elston, by your table of maximum punishments which prescribes that for property taken in such and such a value you will have a given maximum punishment. So it very closely follows, I think, the civilian concept of petite larceny and grand larceny.

Mr. DEGRAFFENRIED. Mr. Larkin, under the construction placed by the military authorities on false pretense, is that construed that

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there must be a statement of an existing fact that is false that causes a person to be deprived of his property or can a mere promise to do something which he fails to do support false pretense?

Mr. LARKIN. I would have to look that up. I know in civil law it usually always is an existing fact rather than a promise.

Mr. ELSTON. Past or an existing fact.

Mr. LARKIN. Past or existing. That is right.

Mr. DEGRAFFENRIED. Well, that is not important enough to cause you any delay here.

Mr. LARKIN. I will look it up. But I am sure the past or existing fact rule applies.

Mr. ELSTON. Are you through, Mr. deGraffenried?

Mr. DEGRAFFENRIED. Yes, Mr. Elston.

Mr. ELSTON. Of course, you eliminated one of the elements of embezzlement, which is agency.

Mr. LARKIN. The fact that a clerk or an employee has lawful custody and then thereafter appropriates to his own use wrongfully with the intent to deprive is the same, I should say, under this, as it is under embezzlement.

Mr. ELSTON. Well, of course, in order to convict of embezzlement there has to be not only agency but the property must have come in to his possession by virtue of his agency.

The mere fact that he is employed by the Government or the fact that some property came into his possession would not make him guilty of embezzlement unless it came into his possession by virtue of his agency.

To illustrate what I mean: Say a man is a cashier. If property came into his possession as cashier and he appropriated to his own use he would be guilty of embezzlement.

But if he went across the aisle and appropriated money from some other cashier's cage he would not be guilty of embeezzlement but larceny.

Mr. LARKIN. That is right. But the question of agency hinges on the fact, does it not, that the custody he has over it is a lawful one? Whether it is a full-blown agent or whether it is an agent for purposes of custody is immaterial. It is the lawful custody.

Mr. ELSTON. Well, of course you can put any definition in that you want.

Mr. LARKIN. That is right.

Mr. ELSTON. But you are including three offenses in one: Larceny, embezzlement and obtaining property by false pretenses?

Mr. LARKIN. That is right.

Mr. ELSTON. And perhaps conversion also?

Mr. LARKIN. Yes.

Mr. SMART. This includes joy riding.

Mr. LARKIN. Yes, under this section a person who would drive the automobile of another, and not intend to steal it at all but just drive it, without consent of the owner, would be guilty under article 121.

Mr. LARKIN. That is right.

Mr. SMART. In that particular instance, Mr. Elston, the punishment will be limited in the table of maximum punishments, in the case of joy riding.

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Mr. ELSTON. Well, I appreciate in military offenses you do not have to be as specific as you do in the civil courts because the statute in each case defines the penalty.

Mr. LARKIN. That is right.

Mr. ELSTON. Here you have a table of punishment which is to be construed in connection with the statute and I suppose you can put anything in the statute you want.

Mr. LARKIN. May I point out the present table of maximum punishments in connection with larceny provides that if it is concerned with property of the value of $20 or less the maximum punishment is 6 months.

In the event that it is concerned with property of a value of $50 or less and more than $20 the maximum is a year. And if it is concerned with property of the value of more than $50 the maximum is 5 years.

Mr. BROOKS. Did we put those tables of punishment in the record?

Mr. LARKIN. Well, you could. But they are to be drawn and provided as is the whole manual, by article——

Mr. BROOKS. Why would it not serve a good and useful purpose to put the tables in? They are not very long, are they?

Mr. LARKIN. Well, they are.

Mr. BROOKS. Well, never mind.

Mr. SMART. There are several pages, Mr. Chairman.

Mr. LARKIN. There are more than that.

They are to be provided, as you will recall, under the article where the President prescribes.

Mr. BROOKS. Sure.

Any further questions?

Any further comments from either you, Mr. Larkin, or you, Mr. Smart, on these articles?

Mr. LARKIN. No, sir.

Mr. ELSTON. Mr. Chairman, I would like to go back to article 119 which defines manslaughter. It says:

> Any person subject to this code who, without a design to effect death, kills a human being in the heat of sudden passion or by culpable negligence or while perpetrating or attempting to perpetrate an offense, other than specified in paragraph (4) of article 118, directly affecting the person, is guilty of manslaughter and shall be punished as a court martial may direct.

Now, what about an intentional killing while the slayer is in the heat of passion? Here you say "without a design to effect death."

You have some types of manslaughter where it is with an intent to kill.

Mr. DEGRAFFENRIED. But where there is an absence of premeditation, deliberation, and malice.

Mr. BROOKS. And in the heat of passion.

Mr. LARKIN. Well, there are variations among the statutes on that point. It probably can be divided into two schools of thought. The first is where you have a design to kill and it is preceded by premeditation and deliberation, which classically is common-law murder in the first degree.

Then you have the kind where you have the design to effect death and it is not preceded by premeditation and deliberation, which is usually murder in the second degree.

Mr. DEGRAFFENRIED. If malice is present.

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Mr. LARKIN. You have murder, then, confined to those in which there is the intent to kill, that is, the design to effect death. Then you come to the next lower degree, if you will, and in this one school of thought, the heat of passion is such that it overcomes the intent to kill or negatives it so much that there cannot be said to be a design to consciously and intentionally effect death because of the disturbed state of mind in the heat of passion.

Mr. ELSTON. Well——

Mr. LARKIN. Then you have a so-called voluntary type in the heat of passion and involuntary type by negligence and so forth.

Then there is of course the other grouping where you have the conscious intent and design to kill, whether premeditated or otherwise, falling into murder in the first or second degree, or going forward (with the intent to kill in the manslaughter but the intent is so beclouded by the heat of passion that it is hard to say, even though you said it is an intent, the heat of passion has not removed entirely that intent because if you can clearly prove the intent to kill in an excited state but not in such a heat of blood or passion that it eradicated your intent, why, you would have been guilty of murder in the second degree rather than manslaughter in the first.

It is perfectly true that the different State jurisdictions have those "one or the other" styles. As a matter of proof, I think, it ultimately comes down to exactly the same thing.

Mr. ELSTON. I do not know that it does. My understanding is that if you kill in the heat of passion or upon sudden or great provocation and do it intentionally it negatives malice.

Mr. DEGRAFFENRIED. That is right.

Mr. ELSTON. But still the intent to kill is there. Now, this definition confines it to an unintentional killing at all times. If there is an intentional killing it is not manslaughter. And there are plenty of cases of manslaughter where the killing is intentional.

Mr. LARKIN. But there is not a design to effect death.

Mr. ELSTON. What is the difference between a design to effect death and intent to kill?

Mr. BROOKS. The design is where you get your premeditation?

Mr. LARKIN. Not necessarily.

Mr. ELSTON. No.

Mr. LARKIN. You may have a design to effect death which is preceded by premeditation and deliberation, or not. It might be on the spur of the moment, a conscious, specific design to effect the death without previous premeditation.

The heat of passion, as I understand it, to reduce below murder in the second degree must preclude the design to effect death. Otherwise, it is murder in the second degree.

Mr. DEGRAFFENRIED. What do you think about this, Mr. Larkin: Murder in the first degree is the killing of a human being with premeditation, deliberation, and malice; murder in the second degree is the killing of a human being with malice but without premeditation and deliberation; manslaughter in the first degree is the intentional, unlawful killing of a human being but without malice and without premeditation or deliberation.

Mr. LARKIN. Well, when you delete the malice from the intention, what have you done?

Mr. DEGRAFFENRIED. Well, the intent. You have the intent there.

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Mr. LARKIN. You are intending an act mala in se and you say it without malice?

Mr. DEGRAFFENRIED. Yes. The passion that you exist under at the time does away with the malice. You still have the intent to kill. But the heat of passion does away with the idea of malice and premeditation and deliberation.

Mr. LARKIN. Well, I cannot see the distinction.

Mr. ELSTON. I see the distinction. There are two grades of manslaughter, voluntary and involuntary, and your definition has completely ignored voluntary manslaughter where there is an intentional killing but there is no malice such as the killing of another in the heat of passion or upon sudden or great provocation.

Now, he intends to kill. There is not any question of an intent to kill. But he does not entertain malice. If he entertains malice, then it is second-degree murder and not manslaughter.

Mr. LARKIN. Well, it becomes a question of the proof, does it not?

Mr. ELSTON. Yes——

Mr. DEGRAFFENRIED. A jury——

Mr. ELSTON. But you have to find the crime, too, and if you want to include voluntary manslaughter, which is made punishable in every State of the Union, I think you would have to change your definition.

Mr. LARKIN. Well, it is not made punishable in New York, specifically, as such. That distinction that I pointed out first, of a design to kill, distinguishes murder in the first and second degree from manslaughter in the first and second degree which is without a design but in the heat of passion.

Mr. BROOKS. Well, I might say in my State we do not have such a crime as murder in the second degree. The crime is murder or manslaughter. And if the jury brings in a verdict of murder it can bring in recommendations for clemency, which is as close as we come to murder in the second degree.

Mr. LARKIN. Yes. Well, you certainly have your choice there.

Mr. ELSTON. Well, it would seem to me that the proper definition of manslaughter would be:

> Any person subject to this code who intentionally kills another in the heat of passion or upon sudden passion and without malice or unintentionally kills another by culpable negligence or while perpetrating or attempting to perpetrate an offense, other than those specified in paragraph (4) of article 118.

Of course, you ought to say "unintentionally." And you ought to say he unlawfully kills. It has to be an unlawful killing.

Mr. DEGRAFFENRIED. That is right.

Mr. ELSTON. You would not say that it was manslaughter to kill another unintentionally unless the slayer was violating the law.

Mr. LARKIN. Or by negligence.

Mr. ELSTON. Or by culpable negligence.

Mr. LARKIN. That is right.

Mr. ELSTON. He has to be violating the law. Suppose he is only violating a city ordinance? You cannot predicate it ordinarily on the violation of a city ordinance unless it is in those States where they recognize culpable negligence as being the basis for manslaughter?

Mr. LARKIN. Yes; where you have those automobile homicides.

Mr. ELSTON. Yes.

Mr. DEGRAFFENRIED. Some States hold that the doing of a lawful act—I do not know exactly how they define it.

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Mr. LARKIN. I think a lawful act in an unlawful manner.
Mr. ELSTON. Or by unlawful means.
Mr. DEGRAFFENRIED. Yes.
Mr. BROOKS. What about that subsection (3), there, where a person intends to perpetrate a crime such as robbery but it results in unlawful killing?
Mr. LARKIN. That would be murder.
Mr. BROOKS. That would be murder?
Mr. LARKIN. That is right. Well, that is provided by (c): Robbery and the few other felonies we mention in article 118——
Mr. BROOKS. Oh, yes.
Mr. LARKIN. Would make it murder, whereas other——
Mr. BROOKS. You take it out of that group mentioned in subsection (4) and then it will be automatically manslaughter.
Mr. SMART. Yes.
Mr. ELSTON. I think you omitted one very essential element in manslaughter, too, in that his unlawful act must have been the proximate cause of his death.
Mr. SMART. I think that is a necessary ingredient.
Mr. ELSTON. It is probably not necessary in the definition?
Mr. SMART. That is right.
Mr. ELSTON. But I mention it since you do undertake to define the thing rather fully.
Mr. SMART. Yes.
Mr. ELSTON. I question your definition of murder too. You make it possible for a person to be guilty of murder in the first degree without even an intention to kill. You say [reading].

Any person subject to this code who without justification or excuse kills a human being when he is * * * engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson, though he has no intent to kill.

Mr. SMART. That is a felony murder.
Mr. ELSTON. I never knew you could be guilty of murder in the first degree without an intent to kill.
Mr. SMART. Well, it is a statutory crime.
Mr. ELSTON. Out in Ohio it is not. You have to have an intent to kill to be guilty of murder in the first degree. You have to have an intent to kill and you have to have malice. And you have to have premediation except in those cases where it is your intention to kill while perpetrating or attempting to perpetrate rape, arson, or burglary.
Mr. LARKIN. Well, it is a felony murder. That is the typical felony murder in certain other States. I do not know about Ohio, Mr. Elston.
Mr. ELSTON. Well, do you want to send a person to his death where he unintentionally kills?
Mr. SMART. During the course of a robbery.
Mr. BROOKS. Intent is presumed in that case, is it not?
Mr. ELSTON. You may presume an intention from the manner in which he commits his act, but you cannot presume it from the mere commission of the act.
Mr. SMART. You have to prove the intent to commit the underlying felony and during the course of the commission of that underlying felony death results.

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Mr. ELSTON. Murder results if he intentionally causes the death or if his act is of such nature that an intent can be inferred.

And a person is presumed to intend the natural, reasonable and probable consequences of his voluntary act?

Mr. SMART. That is right.

Mr. ELSTON. But you cannot assume that he intended to kill unless the circumstances indicate that the execution of his crime might produce death.

Well, just take, for example, a man burns down an old cow shed. He does not anticipate that anybody is in the shed and it happens that a tramp is sleeping there.

Now, he is not guilty of murder in the first degree, as he would be if he burned a dwelling house or a place where people are accustomed to congregate?

Mr. LARKIN. I think that would follow here, would it not?

Well, we have to go to our definition of arson to determine that, but that covers a dwelling house in which people are likely to be and not a structure in which they are not likely to be.

Mr. ELSTON. Well, you just say, "arson." Arson is the unlawful burning of a building.

Mr. LARKIN. "Aggravated arson" we say, and we have a definition for aggravated arson.

You see, in 126 we provide that—

> Any person subject to this code who willfully and maliciously burns and sets on fire a dwelling in which there is at the time a human being, or any other structure, water craft, or movable, wherein, to the knowledge of the offender, there is at the time a human being, is guilty of aggravated arson.

Now, that is the type of arson that is in the felony murder which would sustain a murder charge—not any other kind of arson.

Mr. ELSTON. Of course, you do not differentiate it with murder in the second degree here at all?

Mr. LARKIN. That is right.

Mr. ELSTON. Under this statute a person could be guilty of killing another without malice, without premeditation, and even without perpetrating or attempting to perpetrate rape, arson, robbery or burglary?

Mr. LARKIN. That is right. You see, the death penalty is not provided. The death penalty is provided only in subdivision (1), and then it is not mandatory.

Mr. ELSTON. Well, you do provide for imprisonment for life, though?

Mr. LARKIN. Subject to the maximum table. Well, one is the premeditated type of murder where it can either be the death penalty or imprisonment for life.

Mr. ELSTON. After reading it, you simply say that in section 1 he shall suffer death or imprisonment for life, as a court martial may direct.

In the others he is guilty of murder and shall suffer such punishment as a court martial may direct.

Now, does that not mean they could sentence him to death?

Mr. SMART. No.

Mr. LARKIN. They can sentence him to death only where it is specifically provided in the statute.

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Mr. ELSTON. What is the court limited to, then? You say such punishment as the court martial may direct. What is the maximum?

Mr. LARKIN. What is set forth in the table of maximum punishments.

Mr. ELSTON. Well, what is that?

Mr. SMART. The maximum would be life.

Mr. LARKIN. Well, they would have to spell out what they are. I do not know that they have these separate subdivisions at the present time in the law.

Mr. ELSTON. Then under this definition you could not impose the death sentence if a person killed another while perpetrating or attempting to perpetrate rape, arson, robbery, or burglary?

Mr. LARKIN. That is right. It would be a felony murder. But you could not impose the death sentence.

Mr. ELSTON. Even though he intentionally killed?

Mr. LARKIN. Well——

Mr. SMART. Then you would revert to No. 1, I believe. You would revert to your premeditation.

Mr. ELSTON. You could have an intention to kill without a premeditated design to kill.

Mr. LARKIN. Then it would be under 2, would it not?

Mr. ELSTON. Yes; but under 2 you cannot impose the death penalty.

Mr. LARKIN. That is right.

Mr. ELSTON. You cannot impose it under 3 or under 4?

Mr. LARKIN. That is right.

Mr. ELSTON. You may have the most aggravated rape case in the world. A fellow may rape a 9-year old child and kill the child in the perpetration of his act and even do it intentionally, and if he did not do it with premeditation and deliberation which must exist for some period of time before the killing takes place, he could not be sentenced to death.

Mr. LARKIN. That is right. And he could not in a civil jurisdiction. It would be murder in the second degree.

Mr. ELSTON. Oh, no. In a civil jurisdiction if you have intent to kill plus the element of having killed while perpetrating any one of those felonies it would be a crime guilty of murder of the first degree?

Mr. LARKIN. That is right, but that would be on the theory of the felony murder, would it not?

Mr. ELSTON. Well, if he intentially kills while perpetrating or attempting to perpetrate rape or arson, robbery or burglary without premeditation and deliberation, he is guilty of murder in the first degree and may be sentenced to death?

Mr. LARKIN. That is right.

Mr. BROOKS. Now, in most civil jurisdictions, anyway, where you have the crime of rape you have the death penalty.

Mr. SMART. You have in this code, in article 120.

Mr. DEGRAFFENRIED. And even for armed robbery you have a capital offense.

Mr. ELSTON. Suppose it is an attempted rape on a 9-year-old child and it is not consummated. The attempt can be just as bad almost as the rape itself.

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Mr. LARKIN. That is certainly true, except that I think the standard application of punishments in attempts is less than in the consummated crime.

Mr. DEGRAFFENRIED. Well, under your military law, how long does premeditation or deliberation have to exist? In our jurisdiction it only has to exist for an instant.

Mr. LARKIN. I think that is the typical standard.

Mr. DEGRAFFENRIED. And it becomes a jury question as to whether that deliberation or premeditation did exist. On a 9-year-old child he could not claim he was acting in self-defense. And, if it became a question of fact as to whether he was or not, they would in all probability decide that he was acting with premeditation and deliberation, would they not?

Mr. LARKIN. I think the courts have pretty generally held that to be not much more than a fleeting instant. But it has to be some instant.

Mr. BROOKS. Any further discussion?

If there is no further discussion——

Mr. ELSTON. Well, it seems to me, Mr. Chairman, your murder statute is a little mixed up. Is this the way it is in the law now?

Mr. LARKIN. No. (1) and (2) are the law; (3) is not; and (4) is held to be applicable, although (4) is a statutory type of murder, and I do not know the extent to which it has been used.

I do not think it has been used much at all.

Mr. BROOKS. We might do this: If this is the only article that we have in question, we could pass this over until Monday and let everybody study it and think about it.

Mr. DEGRAFFENRIED. I think that is a good idea.

Mr. ELSTON. That may be a good idea. The point I am making is this: I do not know of any State in which you punish a person for murder unless he intentionally kills, and yet you say here he may commit murder without intending to kill. Now, I grant you the intent may be inferred, but in your definition you have an intent to kill, and you have ignored one type of manslaughter which is certainly prevalent in virtually every jurisdiction in the United States.

You have not defined the two types of manslaughter. I do not know why the death penalty should not be invoked in cases where the person is committing an aggravated felony and intends to kill although there is no premeditation and deliberation. Suppose a man sets fire to a barracks in which there are a lot of soldiers quartered and did not intend to kill anybody in there, did not even know there was anybody in there; the intent is inferred there, of course, but the court would have to tell the jury that the intent would either have to be present by inference or directly.

Suppose he accidentally set fire to it; he would not be guilty of murder.

Mr. BROOKS. Well, suppose we do this: Pass 118 and also 119 over until Monday, and we can think about those two statutes over the week end.

I do not follow everything that has been said here, because in my State we do not have a distinction between the two, nor do we in manslaughter. We have a very simple manslaughter definition. We do not read in two types of manslaughter. It is either manslaughter or it is not manslaughter.

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And our punishment for manslaughter varies from 1 day to 20 years, at the option of the judge.

But, at any rate, if there is no objection we will pass it over until Monday.

That will be one thing we can take up. Now, is there any other article or articles under this section of the code that is subject——

Mr. ELSTON. What about your definition of rape?

Any person subject to this code who commits an act of sexual intercourse with a female not his wife, by force and without her consent, is guilty of rape.

Suppose it is a child, say a child of 15, who does consent but in law lacks the intelligence to give consent. The way your definition is drawn here she could be 6 years old; if she consented there would be no crime of rape.

Mr. LARKIN. I think not. I think that would be a constructive lack of consent.

Mr. ELSTON. I do not think that would be constructive lack of consent. Statutes all fix an age limit. In some States it varies.

Mr. LARKIN. That is right.

Mr. ELSTON. In some it is 16; and in some, 15. In some States they have even gone so far as to make it 18.

Mr. DEGRAFFENRIED. In some States it is a capital offense where the child is under 12 years, and where the child is over 12 and under 16 you have it a felony but provide for a sentence of, say, not less than 2 nor more than 10 years.

Mr. SMART. The age of consent.

Mr. DEGRAFFENRIED. Yes. And they have held this—I have a brief on it which I think I mentioned the other day—you can indict a man for rape.

Of course, they call that other offense sometimes statutory rape, though we call it carnal knowledge.

Carnal knowledge of a child under 12 is a capital offense. Carnal knowledge of a child over 12 but under 16 is a felony with 2 years minimum and 10 years maximum.

But, when you speak of rape ordinarily, you carry with it the idea of force. In the other you do not. They have held that, where a man is indicted for rape and the child is over 12 and under 16 or under 16 and the evidence shows that she consented to it, the element of force being absent, the jury might acquit him.

But you could still turn around and indict him for carnal knowledge of a child under 16, which does not involve the element of force, and try him for that offense, and it would not be a form of jeopardy. I do not know how you define it in military law. You may define rape as rape or constructive rape. And the rape may include all of that. But usually when you speak of rape the thought you have is the idea of force.

Mr. ELSTON. How is it defined now?

Mr. LARKIN. Rape?

Mr. ELSTON. In the military.

Mr. LARKIN. Well, there is no statutory rape in the first place—I mean no age of consent or lack of consent.

Mr. ELSTON. Well, since you are trying to set up a statute, do you not think you ought to include rape with consent?

Mr. LARKIN. Or to enumerate the age of consent?

Mr. ELSTON. Yes.

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Mr. DEGRAFFENRIED. Yes. Suppose it is some little child 10 years old——

Mr. LARKIN. The way the practice has been so far, apparently, carnal knowledge, with her consent, of a female under the age of consent, commonly called statutory rape, is not an offense under this article but may be an offense under article 96. That is the general article which is here now as 136, I think.

Mr. SMART. And for which the death penalty may not be imposed.

Mr. LARKIN. The definition in the manual at the present time is—

Rape is the unlawful carnal knowledge of a woman by force and without her consent and may be committed on a female of any age. Force and want of consent are indispensable in rape, but the force involved in the act of penetration is alone sufficient if there is no consent.

Mr. DEGRAFFENRIED. Do you think you can prosecute under the general section where you have undertaken to define an offense? For instance, in article 120 you have attempted to define the offense of rape. Now, if you have a rape-with-consent case and you undertake to prosecute under the general section that you referred to, might not the question be raised that, since you have undertaken to define rape, you cannot prosecute for any other type of rape?

Mr. LARKIN. For a lesser included offense, you mean, such as carnal knowledge?

Mr. DEGRAFFENRIED. Well, that is not an included offense. I mean rape with consent is not an included offense to rape without consent.

An included offense is one that has to be committed in order to commit the ultimate crime. Rape with consent is only applicable where the child is under a certain age and there is consent. You cannot have consent and lack of consent both.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. What is the number of that general statute, Mr. Larkin? You said 136?

Mr. SMART. Article 134 is the general statute.

Mr. LARKIN. Yes.

Mr. SMART. You will notice that life imprisonment is the maximum penalty which can be assessed for any offense under this article.

Mr. BROOKS. I think that is a serious question. When we were over there in Europe during the course of the war, I recall that they had more trouble with that situation than any other. I went to the Judge Advocate General's office in Paris, and he had 150 capital cases on his desk at that time, and he was very much disturbed about it.

Mr. LARKIN. Well, as I say, this definition was not in the statute. It was the one applied by virtue of the regulations, and if there was consent or the age of consent—and I take it they applied the local age of consent in the community, whether it was 16 or 14 or 18—if there was consent and the person was under that age limit, then, as I say, they tried it under 96—not calling it rape, but calling it carnal knowledge—setting out the specifications of the acts alleged.

Mr. BROOKS. But that is not a capital offense; and it does not seem to me to make sense to say that if they are above the age of consent it will be a capital offense, but if it is a little child under the age of consent there will be no capital offense. If anything, it seems to me the latter would be more aggravating.

Mr. LARKIN. Well, you have, I suppose, any number of girls just under the age of consent who freely consent and have no qualms or

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misgivings about it. You say that is more aggravated than the type where there is no consent?

Mr. ELSTON. Usually a great deal of latitude is allowed, so that if you do have a case—a girl of 15 might look like she is 20——

Mr. LARKIN. That is right

Mr. ELSTON. The accused would not be given a very severe penalty?

Mr. LARKIN. That is right.

Mr. ELSTON. On the other hand, you may have a very young child who obviously is incapable of consent and it may be the most atrocious case in the world.

Mr. LARKIN. Yes.

Mr. ELSTON. Now, it seems to me if you had article 134 which is a general article and you had not defined rape at all it would include rape of all kinds and descriptions.

But when you undertake to define a crime, it seems to me you ought to define all elements of the crime and define it clearly, because you say in the general article, "Though not specifically mentioned in this code" all other offenses may be prosecuted.

Now, you do specifically menton rape

Mr. LARKIN. Yes; with this element: Without her consent.

Mr. ELSTON. Well, that is not a very clear way to do it. If you are going to define rape, let us define it the way it ought to be defined.

Leave this off the record for a moment.

(Discussion off the record.)

Mr. BROOKS. On the record.

Mr. LARKIN. I do not know why they never stated an age in the past. I suppose it is because soldiers are in so many jurisdictions in which there are so many different ages and to select one which is materially different from the local jurisdiction one way or the other inflames the local people.

In other words, if we set 16 or 14 and the local State is very much distressed that he has taken advantage of sombody who is 17 because they think that she ought to be protected until she is 18.

I assume that is one of the problems, or has been.

Mr. ELSTON. You could say the statutory age applicable to the jurisdiction in which the offense is committed, or something like that.

Then you would have fixed an age.

Mr. LARKIN. You probably could do that, which puts the burden, I suppose, on the soldier finding out just what the age is in every State, jurisdiction, and country he is in.

Maybe you should. I am not saying that that is a reason, but it is not very informative.

Mr. ELSTON. Of course, ignorance of the law is no excuse.

Mr. LARKIN. I know.

Mr. BROOKS. Just off the record, Mr. Reporter.

(Statement off the record.)

Mr. BROOKS. But could not we do this, work out some arrangement where a statutory offense of that sort might carry with it the penalty of death? Now, it seems to me—I read in the press fairly recently that the services had decided to abolish rape as a capital offense crime.

Is that right?

Mr. LARKIN. I think so.

Mr. SMART. It does not make the death penalty mandatory as has heretofore been the case. It prescribes death or such other punishment as a court martial may direct.

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Colonel DINSMORE. You see, Mr. Chairman, that was thought out carefully in the Elston bill.

Prior to that time the death penalty was mandatory on conviction for rape. It is recognized that there are all degrees of culpability from a very serious situation down to a borderline case. So the law was changed at that time to provide a lesser penalty than death. But the death penalty is still permissive.

Mr. BROOKS. What did they do during the war, because in every case the death penalty was not imposed? Was it by the use of pardon power? I am asking the Colonel if he knows.

Colonel DINSMORE. It would have to be commuted, Mr. Chairman, by the President at the time.

Mr. BROOKS. Was it not done by the field commanders?

Colonel DINSMORE. Yes, sir; they had that authority, too. A theater commander——

Mr. BROOKS. Under special act of Congress?

Colonel DINSMORE. Yes, sir. It was in the Articles of War at that time.

Mr. ELSTON. Colonel, when we wrote that law last year we proceeded a little bit differently than we are proceeding now. For example, in article 93 we provided—

Any person subject to military code who commits manslaughter, mayhem, arson, burglary, or robbery—

we enumerate a great number of crimes—

may be punished as a court martial may direct.

Colonel DINSMORE. That is correct, sir.

Mr. ELSTON. Now, by that simple statement you go back to your definitions of the crime. And you had a clear definition of the crime and you did not have any trouble about it. As I see it, the trouble arises now by reason of the fact that you are undertaking to specifically set forth the elements of a crime but leaving out some of the elements. You might get in some trouble there because somebody is going to raise the question, "You have defined rape and I am not guilty of rape because the woman consented even though she was 12 years old," and I am not sure that he would not prevail.

Mr. SMART. I would like to point out in that connection that you have to take into account the fact that our troops are in many different countries in a wartime situation and even today in a peacetime situation and whereas in the ordinary and usual jurisdiction in this country the age of consent we will say is 16 years it is a fact that the age of consent is 12 in other countries, so that it would be, I think, too stringent to write out in this code that our troops would be subject to a charge of statutory rape involving a girl 15 years old when as a matter of fact in some countries she can give her consent at the age of 12.

Mr. ELSTON. Now, Mr. Smart, I agree with you. But the way we had the bill written last year you would not have any trouble, because we say any person subject to military law who is found guilty of rape shall suffer death or such other punishment as a court martial may direct.

Then you could always go back and see what rape was in that particular locality. But once you try to spell it out and set forth the elements of the crime and leave some of the elements out it leaves it

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open. I do not see how you are going to prosecute a person for rape if you do not prove all the elements that you have set forth in the definition.

Mr. SMART. Well, on this proposition of statutory rape, of course the way the Army has handled that is to follow the District of Columbia procedure of wrongful carnal knowledge with a female under the age of 16.

The table of maximum punishments prescribes a maximum punishment of 15 years.

Mr. BROOKS. Would it be better to insert a separate article there and refer to it as carnal knowledge and giving latitude so that in any jurisdiction that fails to punish statutory rape there would be no crime or offense and in those jurisdictions that make the punishment the penalty shall be death or such other punishment as the court-martial might prescribe?

Mr. LARKIN. Well, you could spell out a carnal knowledge offense which is less than this and that would cover the suggestion, would it not, Mr. Elston?

Mr. ELSTON. Well, you could either spell it out or leave it like it was last year. If you had it the way it was last year you would not have any trouble.

Mr. LARKIN. Except that the way it was written you refer for the definition to some place else—some manual.

Now, we have two manuals. We are going to have to write in the manual one single definition for everybody. You face the same problem ultimately. There are variations in the manuals, you see, as to just what the definition is, and the elements of each of these crimes.

Last year you were dealing with one service only. Now, in this one specifically I do not think there is any major difference. The naval courts and boards use the Federal definition as contained in 18 U. S. Code 457 and 458, which I do not have before me, but which is further spelled out and it says—

It is the having of unlawful carnal knowledge by a man of a woman forcibly where she does not consent"—

which is, I think, substantially the same as the Army in different words.

It says "of a woman," however. Presumably it could be his wife, under this. But you see, there is that difference in the first place. Then it goes on to say, if the female is under the age of 16, and they adopt 16 as being the Federal age, I believe—

unlawful carnal knowledge of her completes the offense set out and her consent is immaterial.

So you do have a problem of resolving the differences in the Army and Navy and in the case of punitive articles it can only be done by definition.

I think for that specific problem, though, a spelling out of carnal knowledge would help.

To complete the record or correct it, it goes on to say further—

Carnal knowledge will be unlawful in such a case unless the female is the wife of the man.

Mr. BROOKS. It seems to me the best thing to do would be to put in a subsection (c) there.

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Mr. ELSTON. I think you almost have to do it. If you are going to undertake to define a crime you better define it all the way.

Mr. BROOKS. Unless there is objection, then, why not ask Mr Smart and Mr. Larkin to work up a definition for carnal knowledge that we can take up Monday?

Mr. LARKIN. Well, we will, Mr. Chairman.

Mr. BROOKS. Now, is there any further discussion?

Mr. LARKIN. There are two new articles that I think should be brought to your attention. The first is 87.

Mr. ELSTON. What number?

Mr. LARKIN. Eighty-seven.

Mr. BROOKS. Would you want to read that one?

Mr. SMART. Eighty-seven. Missing movement. (Reading:)

Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

References: AW 61; Proposed AGN, Art. 9 (57).

Commentary: This article is taken from proposed AGN, Article 9 (57) and is, in effect, an aggravated form of absence without leave as set forth in AW 61.

Mr. LARKIN. Now, I say that is new, Mr. Chairman. It really is an aggravated form of absence without leave, but the type of absence without leave which is specifically connected with the circumstance of missing a ship or a unit when it is about to move.

Now, the experience of World War II was such that in a large number of cases persons who were either legitimately on leave or those who were not or who left without authority, did so just about the time that their ship was to sail or their unit was to move.

It is considerably more serious for a man to be absent at that time than to be absent under other circumstances.

It was felt that it is desirable and necessary to spell out those circumstances and facts in a specific article.

I would expect that the maximum sentence for this type of absence without leave would be heavier than an absence without leave that takes place in different circumstances.

Mr. BROOKS. Do you think that article ought to include other things besides ships and aircraft—for instance, vehicles?

Mr. LARKIN. Well, or unit.

Mr. BROOKS. You could strike out "ships and aircraft" and put "unit" and leave it alone, but if you start to denominate the types of vessels, had you not better cover all of them?

Mr. LARKIN. Well, I think if he missed the movement of a truck it would not make any difference unless his whole unit was moving up front or overseas or wherever else they were going.

So I think that would not cause the trouble you expect.

Mr. BROOKS. It did not in the last war, but you might have a case where you do not have to go overseas.

Mr. LARKIN. Well——

Mr. BROOKS. I just put that out to you.

Mr. LARKIN. Yes.

Mr. BROOKS. It seems to me that you are just doing the same thing you did in the other article and that is leaving it incomplete.

Mr. LARKIN. I think that is as complete as it can be.

Mr. SMART. What is your other article?

Mr. LARKIN. The other article is 105.

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Mr. SMART (reading):

ART. 105. Misconduct as a prisoner.

Any person subject to this code, who, while in the hands of the enemy in time f war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

hall be punished as a court martial may direct.

References: None.

Commentary: This article is new, and stems from abuses of this nature arising out of World War II.

Mr. LARKIN. This article, Mr. Chairman, I think is self-explanatory. It provides for those circumstances which were found in the Hirschberg case, for instance.

And there were other cases of that character. Heretofore, they have been tried, I believe, under the general article.

There apparently was enough of this kind of conduct to warrant that it be specifically made an offense and not just left to the general article.

They are the only two I wanted to bring to your attention.

Mr. BROOKS. We have held open the article covering murder, manslaughter, and we have indicated the necessity, perhaps, of an additional subdivision under the rape article.

Article 77 was amended and the committee has approved the amendment.

Now, if there are no further comments on these punitive articles we will just adopt them as they are read, with those reservations which I have indicated.

Now, what is the pleasure of the committee? Shall we proceed with the discussion on to the end of the bill?

Mr. SMART. I would, if I may, Mr. Chairman, point out that the remaining articles from 135 to 140, inclusive, are a restatement of existing law, substantially speaking, except in the case of article 139, which is redress of injuries to property. This article has been cut down from the present article of war in view of the definitions of larceny and forgery now contained in the code.

I think there is no question about those articles, except on article 140: The authority for the President to delegate authority vested in him under this code.

The general criticism was made that that was much too broad. I think the general intent is that he would be authorized to delegate administrative authorities granted under the code but not judicial authority.

If that is the feeling of the committee it could be very easily rectified by inserting the word "administrative" in there. I would like to hear from the departments, however, as to their reaction.

Mr. BROOKS. What do you think, Colonel?

Mr. LARKIN. Well, may I explain the origin of this article? We had not thought of it ourselves. We included it in the code at the request of the Bureau of the Budget, and they recommended that we adopt this article verbatim from the Public Law 759, title I. Title I, as you

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will recall, had to do with selective service and this provision is contained therein in exactly these words.

So we provided this article at their request.

Now, I think despite this authorization the President cannot delegate judicial acts, perhaps even legislative acts. So it is effective only to the extent that it is an administrative act.

I think they have to be studied on a case-by-case basis as they come up.

But it was the desire of the Bureau of the Budget to provide an appropriate flexibility in the future if it appears that it is desirable for the President to delegate some of his duties under the code.

Now, that is the source of it.

Mr. SMART. I think that the particular criticism goes to the subdelegation. My understanding now as to the Army is that he may delegate one time but no more.

Now, this provides that he may delegate and subdelegate.

Mr. LARKIN. I see no reason why he should not, if it is a nonjudicial act. In other words, he might want to in the first instance delegate it to the Secretary of Defense just because the Secretary of Defense is the chief official in the whole National Military Establishment, but the Secretary of Defense's chief function is a policy one and not an operating one and while the President might desire to look to him and hold him responsible he may not desire to have him operate as well and might be perfectly willing to have him subdelegate it to a departmental secretary, holding the Secretary of Defense is responsible.

I do not know that from purely an administrative point of view that is objectionable.

Mr. BROOKS. I personally think that the President ought to be allowed to delegate all of the authority which he feels like should be delegated.

Mr. LARKIN. I think so. If there is any authority that is judicial and that is nondelegable that is a question for the Attorney General. I should say you have to scrutinize any and every attempt to delegate based on what you are trying to delegate.

As I say, again, if it is judicial or even legislative, I should think he would request and be guided by the opinion of the Attorney General in that case.

Mr. BROOKS. Any objection to that article?

If not, we will approve it as read.

Mr. SMART. That completes all of section 1 except article 67, review by the Judicial Council.

Mr. ELSTON. Then, of course, we have reserved for discussion the matter of a separate corps.

Mr. LARKIN. Oh, yes.

Mr. SMART. That is the last item of business, I hope.

Mr. BROOKS. Are there any other reservations that we could take up? What about article 3? Are we prepared to dispose of that? Can we do that now and leave the Judicial Council and the command influence until Monday, together with those three articles that we have bypassed?

Mr. SMART. Well, I would direct your attention, Mr. Chairman, to page 4 of the bill, article 2, subdivision (3) and (4). Now, the committee has passed action on both of those and I have some language here which is suggested as a substitute for the language in subdivision (3).

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Strike out lines 24 and 25 on page 4 and substitute—

eserve personnel, while they are on inactive duty training——

Mr. BROOKS. Just a moment. Is it long?

Mr. SMART. Well, it is about five lines.

Mr. BROOKS. Can you go a little slower so we can write it down?

Mr. SMART. I doubt if you can write it all on there, Mr. Chairman. ou may be able to:

eserve personnel, while they are on inactive duty training authorized by written rders which are volunatrily accepted by them, which orders specify that they are ubject to this code.

Now, Mr. Chairman, this makes it clear that Reserve personnel who re merely wearing the uniform, taking correspondence courses and hings of that character are not subject and it very clearly points out hat they will only be subject when they are on duty as a result of vritten orders which they voluntarily accept and which orders plainly ell them that they are subject to the code.

I think that that is ample protection for any reserve.

Mr. BROOKS. I think that will meet the objection made heretofore n these hearings.

What do you think, Mr. Elston?

Mr. ELSTON. It would seem to.

Mr. BROOKS. Then, if there is no objection, we will adopt that anguage.

Mr. SMART. Now, I would call your attention to the top of page 5, subdivision (4). This is not a matter of amending the wording used. It is a question as to whether or not, as a matter of policy, you think hat retired personnel of a Regular component who are entitled to receive pay should continue to be subject to the code.

They are now. The question is, will they continue to be or not?

Mr. BROOKS. Your recommendation, Mr. Smart, is that they should be retained as subject to the code?

Mr. SMART. I am reluctant to say, Mr. Chairman, what my recommendation would be.

I would point this one thing out to you: It seems a little inconsistent to me that retired personnel of a Regular component are subject when as a matter of fact you have non-Regular personnel in the Navy who are on the same retired list and entitled to the same rights and benefits as the regular.

The Navy apparently here has waived their right to their jurisdiction, so that the retired non-Regular Navy officer, even though he is on the retired list of the Navy will not be any more subject to the code than the non-Regular Army officer who is drawing retirement pay from the Veterans' Administration.

It is treating reserves alike, I will admit, but it is treating two classes of people on the same retired list differently too.

Mr. BROOKS. The Congress put this retirement under the Veterans' Administration so as to get it away from the active service.

Mr. SMART. That was by virtue of an Executive order, sir, of the President. When the retirement law was passed—the act of April 3, 1939—it pertained to Reserve officers of the Army and the Air Force.

It was silent as to who would administer the benefits. The Army had fought the bill all the way through. So on the 27th of April, after the passage of the act on April 3, 1939, the War Department prevailed

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upon the President to issue his Executive order, I think No. 807 which transferred that responsibility to the Veterans' Administration.

The following August of 1940, an almost identical act was passed covering Reserve personnel of the Navy and providing for the retirement for disabilities incurred in service of more than 30 days' duration.

That act was likewise silent as to who would administer the benefits. The Navy undertook to administer it themselves.

As a consequence, the Reserves of the Navy are on the same retired list as the Regulars and paid from naval appropriations.

Mr. BROOKS. Now, last year in the retirement bill which we passed we failed to act on that, did we?

Mr. SMART. That is correct, sir. You have not disturbed it, sir.

Mr. BROOKS. We discussed it at length, I recall that.

Mr. SMART. That is correct. It could be altered in the next 15 minutes by the President either by issuing an additional Executive order transferring all those Reserves from the Army or the Air Force who are at the Veterans' Administration back to the Army or by taking the Navy Reserves away from the retired list of the Navy and transferring them over to the Veterans' Administration too.

Mr. BROOKS. Well, if there is no motion and no suggestion to the contrary, as a part of the suggested bill here—they are being paid as Reserves and furthermore, it is a part of the present law, is it not, and has worked all right, has it not?

Mr. SMART. I——

Mr. BROOKS. Then, if there is no objection, we would like to include that.

Mr. SMART. I would next like to direct your attention to article 3 (a), which came in for a lot of criticism. I think the ultimate opinion of the committee was that Reserves should continue to be subject to trial, for offenses committed while they were on active duty, even after they had returned to an inactive status if the offense were a serious offense and if the civil courts of this country, either State or Federal had no jurisdiction to try the case.

With that understanding there is some proposed language to accomplish that. May I read it, sir?

Mr. BROOKS. Will you read it?

Mr. SMART (reading):

Subject to the provisions of article 43—

this will be too long to write down, Mr. Chairman—

any person charged with having committed an offense against this code punishable by confinement for 5 years or more and for which the person cannot be tried in the courts of the United States or any State or Territory thereof or of the District of Columbia while in a status in which he was subject to this code, shall not be relieved from amenability to trial by court-martial by reason of the termination of such status.

Now, that will get the Hirschberg case where he reenlisted. It would get Hirschberg even though he had not reenlisted.

Mr. BROOKS. That will close up that loophole?

Mr. SMART. In my opinion it will, sir.

Mr. BROOKS. What is your opinion?

Mr. ELSTON. I am inclined to feel it would.

Mr. BROOKS. All right, if there is no objection, then, we will adopt that language.

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Will you make, Mr. Smart, copies of that amendment so we could lace it in our manuscript and have it available?

Mr. SMART. Yes, sir.

Mr. BROOKS. Make enough copies so the other members can have , too.

Mr. SMART. Yes, sir.

I would like to call your attention next to article 15, for some etter language than that adopted there.

On page 14, subdivisions (E) and (F), we have tentatively decided o use the words "When assigned to or aboard ship."

There is a little better language, which is as follows:

imposed upon a person attached to or embarked in a vessel.

Mr. BROOKS. That is under what subdivision?

Mr. SMART. On page 14, line 15, subdivision (E).

Mr. BROOKS. Read that again.

Mr. SMART (reading):

f imposed upon a person attached to or embarked in a vessel.

And those same words would be repeated in subsection (F), at the beginning of the section in either case.

Mr. BROOKS. In both cases it will be at the beginning of the section?

Mr. SMART. Yes, sir; in section (E) immediately before the word "confine," and in section (F) immediately before the word "confine."

Mr. BROOKS. That seems all right.

Is there any objection to that?

If not, that verbiage will be adopted.

Mr. SMART. On page 22, article 25, there was some discussion by the committee as to the choice of words. It involves whether or not we would continue to use the word "competent" in line 6, line 10, line 16, and line 25. It has been concluded that it would be perhaps clearer if we would substitute the word "eligible" for the word "competent" in each of those cases.

I think that will meet the objection which was raised by the committee.

Mr. BROOKS. What page is that?

Mr. SMART. On page 22, in article 25. It occurs in four places: first on line 6, line 10, line 16, and line 25.

Mr. BROOKS. That ought to meet with your approval, Mr. Elston.

Mr. ELSTON. Yes.

Mr. BROOKS. If there is no objection, then, those four changes will be made in article 25.

Mr. SMART. The next suggestion, sir; is in article 27, on page 25, in subsection (b) (1). There was some discussion as to the qualifications of counsel.

I would suggest this wording which I think will meet your objections: On page 25, line 5, delete the words "a person who is" and following the word "guard" in line 5, insert "who is a graduate of an accredited law school."

Mr. BROOKS. So that will read this way—let us see if we have it straight—subsection (1):

shall be a judge advocate of the Army or the Air Force or a law specialist of the Navy or Coast Guard who is a graduate of an accredited law school or is a member of a bar of a Federal court or of the highest court of a State.

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Mr. SMART. That is correct.

Mr. BROOKS. "; and."

Mr. SMART. Now, in line 6 strike the word "and" and insert "or shall be a person who is a member of the bar of a Federal court or of the highest court of a State and";

Mr. BROOKS. Any further suggested changes in that article?

If not, and there is no objection to those suggested changes, we will adopt those.

Mr. SMART. The next article is article 30, on page 27. It involves the wording in subsection (b) beginning on line 15. The particular suggestion was that we notify the accused forthwith. You will probably recall the practical difficulty we get into there since the accused may not be in custody and it is impossible to notify him forthwith.

Now, if he is in custody you can. It is my feeling that if this committee will clearly endorse the opinion that it is intended by these words that if the accused is in custody he will be forthwith informed of the charges against him and that if he is not in custody he will be so informed as soon as practicable after he is returned to custody, I think no additional words are necessary—if you will endorse that which I have just said and if that is your intention.

Mr. BROOKS. I think that is the feeling of the committee. You would do it by references to the hearings?

Mr. SMART. Yes, sir. It is very cumbersome, Mr. Chairman, to insert other words in there without belaboring the intent of this particular article.

Mr. BROOKS. Any objection to that?

Mr. ELSTON. No.

Mr. BROOKS. If there is no objection to handling it that way, we will then endorse the interpretation which Mr. Smart has just placed on the meaning of the latter part of that article.

Mr. SMART. The next suggestion, sir, occurs in article 31, on page 28, subsection (c). We passed that due to the objection of Mr. Elston, who thought that it was too broad. May I suggest that beginning on line 12 and continuing on line 13, you delete the words "or for use before," which will clearly limit the use, in this case, to trials before a military tribunal.

I think that was the point that you wanted.

Mr. BROOKS. Is that all right with you?

Mr. ELSTON. Yes.

Mr. BROOKS. If there is no objection, we will adopt that suggestion.

Mr. SMART. The next one is in article 43: The statute of limitations, on page 36, subsections (b) and (c).

You will recall that I raised an objection to the particular wording here because I felt that it was a nebulous place to hook on the statute of limitations by having charges and specifications received by an officer having summary court-martial jurisdiction over the command.

I doubt that I had as complete an understanding of the situation at that time as I now have. I find that in the event of, we will say a Navy enlisted person, if he is A. W. O. L. in excess of 10 days he goes into a straggler status and if he continues to be A. W. O. L. for as much as 30 days he then goes into desertion and his file goes to the Chief of the Bureau of Personnel.

Is that correct, Captain Woods?

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Captain Woods. Yes.

Mr. Smart. Now, in the case of Army and Air Force personnel the thing that we were concerned about was, I think, deactivated units—who was going to operate in those cases—and I now find that in the event a unit is deactivated they must process the records of every man and if they have certain men who are absent in desertion or are A. W. O. L. they transfer them as an administrative process to another unit then in existence so that the language here, I think, would be broad enough to cover it and I hope will keep it from being a desk-drawer operation.

It is a very difficult situation. I do not think it is very practical, in that I do not think it is going to be used very much.

So whether you adopt this or not I do not think you have hurt or helped much in any event.

So to leave it as it is I believe would be generally acceptable.

Mr. Brooks. If there is no objection, we will approve that suggestion.

Mr. Smart. My next inquiry goes to article 50, on page 42. There again I think the point was raised by both the chairman and by Mr. Elston.

Beginning on line 16 on page 42, after the word "admissible" the committee had already approved the insertion of these words: "under the rules of evidence," so that it must have been admissible under the rules of evidence.

Now, the next point that you raised was that it must be confined to the issues which were raised at the court of inquiry. Now, in order to accomplish that I would suggest that on line 19 after the word "inquiry" insert "and if the same issue was involved."

Mr. Brooks. Would that be "were" or "was"?

Mr. Smart. "And if the same issue was involved."

Mr. Brooks. "Was" involved?

Mr. Smart. Or if you want to make it in the plural: "issues were involved.'

Mr. Brooks. I think that covers the matter we were discussing at that time. If there is no objection, then, we will adopt that wording.

Mr. Smart. The next inquiry, sir, goes to article 57 on page 47, in subdivision (a). The question was discussed as to whether or not some latitude should be given which would make it possible for the dependents of a convicted enlisted person to continue to draw allowances. The Navy had indicated previously to the committee that they do that now as an administrative matter. This to me is purely a matter of policy. I do not feel that it is an appropriate provision for statutory law.

I do not know how you are going to define as a matter of law a meritorious case.

Now, as of this moment the Secretary of the Army and the Secretary of the Air Force can follow present Navy procedure, which we assume is legal.

They are doing it by virtue of policy within the Navy Department but it does not go to the forfeiture, however, in the Navy. What they do is to remit enough of the forfeiture of pay so that the enlisted man will have $22 left and thereby he can match the Federal contribution so that his wife can get $50.

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I am strongly of the feeling that this involves too many issues of human relations and everything else for the committee to go into as a statutory proposition.

However, I naturally abide by your wish. I would leave it as it is, Mr. Chairman.

Mr. BROOKS. Have you any suggestions, Mr. Elston?

Mr. ELSTON. No.

Mr. BROOKS. Why could not a sentence be added to that subsection which would say that nothing herein shall be construed to prevent the remission by the Department of that pay of an enlisted man necessary to permit the payment to meet the Federal contribution for the payment of dependency allowances?

Mr. SMART. Well, I would think there are two points to your question, sir. One is that they appear to have that authority as of this moment and even if you wrote it into law you would not affect the policy that the respective departments might want to adopt.

They can do it right this minute if they so desire as a matter of policy.

Mr. BROOKS. You would not be changing the policy but you would be indicating the attitude of Congress, which will be fairly strong in reference to indicating some sort of a policy of that sort.

I feel very strongly that the service injures itself considerably in the failure to adopt that policy.

I have a great many complaints from families in destitute circumstances who feel that the service has taken away their means of support, whether properly or improperly.

Mr. SMART. Yes.

Mr. BROOKS. Or whether rightfully or wrongfully it is still the case.

Mr. SMART. I would make this suggestion for your consideration, that in view of the difficulty of engaging in a statutory enactment to cover this matter of policy you, Mr. Brooks, present this very problem to the full committee and if it is the sense of the full committee that they want the Secretary of the Army and Secretary of the Air Force to know that they would like for them to exercise that authority and so advise them by letter or resolution or whatever means you think may be appropriate.

Mr. BROOKS. I think that is a good suggestion. If there is no objection, then, we will take that one matter up Monday and see what the sense of the subcommittee is at that time.

Mr. SMART. Yes, sir.

Now, article 64, on page 51. The point there was that the committee wanted to be sure that the convening authority had the right to remit any part of the sentence he wanted to, that is, to do anything he desired with that sentence, so far as abating it was concerned.

So I would suggest on page 51, at line 17, immediately before the word "determines" at the end of line 17, insert "as he in his discretion," so that he is not then limited to the findings or sentence or anything else but his discretion.

It becomes a discretionary matter with the convening authority as to what he shall do with any sentence which comes before him for review.

Mr. BROOKS. Any objection to that verbiage? If not, we will adopt that.

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Mr. SMART. Mr. Chairman, it seems to me that that brings us down to today's activities.

I think on article 70 it was agreed that appellate counsel would be qualified in the same manner as prescribed in article 27 (b) (1) and now you have prescribed those qualifications in article 27 (b) (1), so that is taken care of.

Mr. BROOKS. Fine.

Mr. SMART. I think that that is all of the articles which we have passed except the punitive articles which you have discussed this afternoon.

Mr. BROOKS. And the two major questions which we are holding over anyway.

Mr. SMART. Yes, sir.

Mr. LARKIN. Yes, sir.

Mr. BROOKS. Well, if there is no further comment and no further business to take up this afternoon, we will stand adjourned, gentlemen, until 10 o'clock Monday.

(Whereupon, at 4:08 p. m., the committee adjourned, to reconvene at 10 a. m., Monday, April 4, 1949.)

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UNIFORM CODE OF MILITARY JUSTICE

MONDAY, APRIL 4, 1949

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE NO. 1,
Washington, D. C.

The subcommittee reconvened at 10 a. m., the Honorable Overton Brooks (chairman) presiding.

Mr. BROOKS. The committee will please come to order.

Now, Saturday, gentlemen of the committee, we finished the bill. We went over all of the matters which had been reserved for special consideration, excepting about three major questions. We took up all of these minor matters. A great many of them have been instances where Mr. Elston felt that the phraseology might be changed some, or maybe Mr. Rivers or some of the others. They felt like some minor changes might be made. And we settled all of those.

That will leave us, first, the matter of the Judicial Council, and, second, the matter of the separate Judge Advocate General. That is about all.

What else is there, Mr. Smart?

Mr. SMART. You have articles 118, 119, and 120.

Mr. BROOKS. Yes.

Mr. SMART. Which are murder, manslaughter, and rape.

Mr. BROOKS. Yes.

Mr. SMART. And whether or not you are going to have a new article to cover carnal knowledge.

Mr. BROOKS. Well, now, suppose we take up the Judicial Council first.

Mr. SMART. Shall I read article 67, sir?

Mr. BROOKS. Yes.

Mr. SMART (reading).

ART. 67. Review by the Judicial Council.

There is hereby established in the National Military Establishment a Judicial Council. The Judicial Council shall be composed of not less than three members. Each member of the Judicial Council shall be appointed by the President from civilian life and shall be a member of the bar admitted to practice before the Supreme Court of the United States, and each member shall receive compensation and allowances equal to those paid to a judge of a United States court of appeals.

(b) Under rules of procedure which it shall prescribe, the Judicial Council shall review the record in the following cases:

(1) All cases in which the sentence, as affirmed by a board of review, affects a general or flag officer or extends to death;

(2) All cases reviewed by a board of review which The Judge Advocate General orders forwarded to the Judicial Council for review; and

(3) All cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the Judicial Council has granted a review.

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(c) The accused shall have 30 days from the time he is notified of the decision of a board of review to petition the Judicial Council for a grant of review. The Judicial Council shall act upon such a petition within 15 days of the receipt thereof.

(d) In any case reviewed by it, the Judicial Council shall act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the board of review. In a case which The Judge Advocate General orders forwarded to the Judicial Council, such action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, such action need be taken only with respect to issues specified in the grant of review. The Judicial Council shall take action only with respect to matters of law.

(e) If the Judicial Council sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. Otherwise it shall order that the charges be dismissed.

(f) After it has acted on a case, the Judicial Council may direct The Judge Advocate General to return the record to the board of review for further review in accordance with the decision of the Judicial Council. Otherwise, unless there is to be further action by the President, or the Secretary of the Department, The Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the Judicial Council has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) The Judicial Council and The Judge Advocate General of the armed forces shall meet annually to make a comprehensive survey of the operation of this code and report to the Secretary of Defense and the Secretaries of the Department any recommendations relating to uniformity of sentence policies, amendments to this code, and any other matters deemed appropriate.

References: A. W. 48, 49, 50 (a), (c), (g); 51, 52; proposed A. G. N. article 39 (g).

Commentary: This article is new, although the concept of a final appellate tribunal is not. Proposed A. G. N. article 39 (g) provides for a board of appeals while A. W. 50 (a) provides for a Judicial Council. Both of these tribunals, however, are within the Department. The Judicial Council provided for in this article is established in the National Military Establishment and is to review cases from all the armed forces. The members are to highly qualified civilians, and the compensation has been set to attract such persons.

Automatic review before the Judicial Council is provided for all cases which must be approved by the President. See A. W. 71. The Judge Advocate General may direct that a case be reviewed by the Council, and an accused may request review and will receive it where the Council finds good cause.

The time limits specified in subdivision (c) are necessary to eliminate undue delay in the execution of sentences.

The Judicial Council takes action only with respect to matters of law. In this, it differs from the final appellate tribunals now set up in or proposed for the Departments. It may act only with respect to the findings and sentence as approved by the convening authority. If the board of review has set aside a finding as against the weight of the evidence this decision cannot be reconsidered by the Council. If, on the other hand, the board has set a case aside because of the improper introduction of evidence or because of other prejudicial error, the Judicial Council may reverse if it finds there has been no such error.

The Council shall affirm the findings and the sentence if it determines that, with respect to the matters which it considers, there has been no error of law which materially prejudices the substantial rights

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of the accused. (See article 59, Commentary.) It may affirm so much of a finding of guilty as involves a finding of guilty of a lesser included offense. (See Article 59.) The only action which the Council may take with respect to the sentence is to determine whether or not it is within legal limits.

As to the power to order a rehearing covered in subdivision (e), see article 63.

Subdivision (g) assures an annual review of sentence policies of the armed forces. This is provided to assure uniformity.

Mr. RIVERS. May I ask one question?

Mr. BROOKS. You have heard the article read. Mr. Rivers, do you have a question?

Mr. RIVERS. What is the tenure of office, Mr. Smart?

Mr. SMART. There is no tenure prescribed here. It has been left open, I think, intentionally, as a matter to be determined by this committee.

Mr. RIVERS. Well, now, what about on good behavior?

Mr. SMART. It has been pointed out, of course, by Justice McGuire, that this is not a constitutional court. I am not out of order, I think, in saying that it was originally planned to have each of the Secretaries appoint one-third of the members of the Council. There were subsequently some disagreements on that. Then it was felt to be advisable to leave the appointments to the President. Now, they did not go further and make it a constitutional court, that is appointed by the President, by and with the advice and consent of the Senate for life, subject only to good behavior.

Mr. RIVERS. I think the tenure, if it should be decided for any term of years, should be staggered so as to always have a man on Judicial Council who knows about the make-up of the court.

Mr. BROOKS. I feel that way, too. I feel very strongly that the success or the failure of the whole thing is going to lie in the Judicial Council, and it seems to me you ought to have a strong court, whether you call it a Judicial Council or otherwise makes no difference. But it has been going through my mind that we ought to write in there some tenure. My thought was to put in "during good behavior," and that they ought to be confirmed by the Senate. Of course, whether we put it in there or not, I am satisfied that the Senate is going to write it in there.

Mr. RIVERS. Don't let us put it in, then. Let us have some reason for going to conference.

Mr. BROOKS. Well, that might be a good reason. But it ought to be a strong court, because it is going to have control of the whole system and is going to make recommendations to the Congress from time to time; and, unless it is a strong court, your system is not going to be responsive to the recommendations.

Mr. RIVERS. I feel, though, that this Judicial Council shouldn't be closed up. Of course, good behavior takes them away from any political aspect or any pressure. That is always a laudable suggestion, as a theory underlying our courts of last resort and our courts of inferior jurisdiction to the Supreme Court.

Mr. LARKIN. Well, if you want a precedent, Mr. Rivers, in the Federal Court, why, it is during good behavior, which means life.

Mr. RIVERS. Yes.

Mr. LARKIN. Or it means mandatory retirement at 70, I believe.

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Mr. BROOKS. Mr. Larkin, what would be the objection to writing in something like that, making the tenure during good behavior?

Mr. RIVERS. Just say it shall be good behavior and shall be appointed by the President by and with the advice and consent of the Senate. I am sure that would meet the approval of the other body.

Mr. LARKIN. I am sure it would.

Mr. RIVERS. I know that.

Mr. BROOKS. Do you have any suggestion, Mr. Elston, on that?

Mr. ELSTON. No. That conforms to my view about it, which is that it ought to be the same as Federal courts, I mean for life during good behavior. I think there should also be a provision that the members should not all be of the same political party.

Mr. RIVERS. That is right. Like the Commissions. The Federal Communications Commission, and so on.

Mr. ELSTON. Yes.

Mr. BROOKS. You might write in there something about bipartisanship. I don't know whether men should be selected, though, because of their affiliation with a political party. I don't think that ought to be the test, but, rather, the ability to do the job.

Mr. ELSTON. I am sure they could find men of ability in both parties.

Mr. RIVERS. Yes; we have ample precedent for that.

Mr. ELSTON. Yes.

Mr. LARKIN. I don't think there is a limitation on the Federal court, but I don't recall. I know it doesn't apply to the Court of Claims, anyhow.

Mr. ELSTON. But it is a requirement with respect to a number of boards, such as the Federal Trade Commission——

Mr. LARKIN. That is right.

Mr. RIVERS. The Federal Communications Commission.

Mr. ELSTON. The Maritime Commission, the Federal Communications Commission——

Mr. LARKIN. I know the Federal Trade Commission, specifically, has such a requirement.

Mr. ELSTON. Yes, and I think some of the others.

Mr. HARDY. I wonder if that is a good idea with respect to judicial people. I wouldn't think that in normal practice it would happen, but I wonder if it is a good thing to require.

Mr. RIVERS. It won't hurt.

Mr. BROOKS. Well, I don't know. What concerns me is, when you say there must be a bipartisan board, whether or not the political qualification should be considered in appointment.

Mr. ANDERSON. Mr. Chairman, is it required by any Federal courts?

Mr. BROOKS. No Federal courts.

Mr. RIVERS. I don't think so.

Mr. BROOKS. As a matter of fact, however, it has happened in a great many cases with the Supreme Court. I can recall——

Mr. RIVERS. Harold Burton.

Mr. BROOKS. I can recall the last justice we had from Louisiana was appointed by a Republican President. He was made the Chief Justice subsequently.

Mr. RIVERS. Couldn't we put something in the commentary or the record to say that it is the sense of this group that the judicial qualifi-

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cation must predominate and where possible a bipartisan selection shall be encouraged?

Mr. BROOKS. Yes.

Mr. RIVERS. Just say in the same manner in which the President takes cognizance of this in his selection of the members of the Supreme Court.

Mr. HARDY. For myself, I will subscribe to that statement in the record here as being the sense of my angle on this committee.

Mr. DEGRAFFENRIED. I will, too.

Mr. RIVERS. Don't say "bipartisan" because there may be another strong party in the next election.

Mr. DEGRAFFENRIED. Certainly, the National Military Establishment or any court within it wants to and endeavors continually to stay out of politics. We don't regard it as a political branch of the Government, and I don't think Congress does, either.

Mr. ELSTON. No, and that is the reason for my suggestion.

Mr. DEGRAFFENRIED. Yes.

Mr. ELSTON. Because I don't want it to be political. But appointments are made that are political, and certainly there have been many where, in Federal courts, you get an unbalanced court. Take the Supreme Court of the United States today. I don't want to make any comment on it because everybody knows about it, but there have been times when Republicans appointed Democrats, as was pointed out. President Taft appointed Chief Justice White from Louisiana, wasn't it?

Mr. BROOKS. Yes.

Mr. RIVERS. That is right.

Mr. ELSTON. And they have followed a policy of trying to keep the courts nonpartisan and nonpolitical. But it can be abused. For my part, I feel like we ought to say we want it that way.

Mr. RIVERS. Yes.

Mr. HARDY. Let us do it in the record, Mr. Elston, and not in the law.

Mr. ELSTON. Well, that might be the solution of it, although I don't want to just foreclose myself from probably bringing it up again. I just want it certain that this court which is going to be an exceedingly important court is not filled by political appointments.

Mr. BROOKS. Let me suggest this thought: don't you think when we make it confirmable by the Senate that you are reaching at the same idea that you have in mind?

Mr. ELSTON. I don't think that quite reaches it.

Mr. ANDERSON. I suggest, Mr. Chairman, that Mr. Smart be authorized to place in the record the views of this committee as expressed by the gentlemen here, that the court be nonpolitical and bipartisan.

Mr. BROOKS. Well——

Mr. ANDERSON. That we not put it in the law at the present time——

Mr. BROOKS. The question is nonpartisan instead of bipartisan.

Mr. ANDERSON. Either way, which is the best legal term; and that we let Mr. Elston reserve the right to raise the issue later on if he so desires. That is just a suggestion.

And I would like to ask one more question, if I may. I note it says "The Judicial Council shall be composed of not less than three members." Should there not be also a "not more" in there some

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place, so there wouldn't be more than five or more than seven. Shouldn't there be some limitation? You might get another packed court.

Mr. SMART. I think you must keep in mind, gentlemen, that again we are operating on a peacetime basis, but who knows when war is coming and certainly when it does come I think we should anticipate whether or not it will be possible to make temporary appointments to the Judicial Council or whatever you want to call it. I think the committee should receive a little more testimony here as to who is going to help administer this court. Are commissioners anticipated? What is the probable case load? I think the committee ought to receive some figures here.

Mr. BROOKS. Yes. I think we ought to have some figures, too.

Mr. ANDERSON. I think that is a good idea.

Mr. SMART. We don't even know whether this Council can do the job.

Mr. BROOKS. If we make the tenure in good behavior, you can't have temporary appointments.

Mr. SMART. I understand that. But I don't believe you want to leave it so you have the situation where in war time you may get a nine-man Judicial Council and during the ensuing peace you have the top-heavy structure of a nine-man council which you don't need.

Mr. ELSTON. Wouldn't the better way be to pick a definite number and if there is an emergency let Congress take care of the emergency function? In fact, the other day we passed a law to fix it for a temporary period. I believe it was in Georgia.

Mr. DEGRAFFENRIED. I know it was in Georgia, where a judge had gone blind and they needed another judge to help with the work.

Mr. ELSTON. So Congress can make emergency provision to take care of an unusual work load. I think we have such a provision in 68 (b), where we say:

> In time of emergency, the President may direct that one or more temporary judicial councils be established for the period of the emergency, each of which shall be under the general supervision of the Judicial Council.

Mr. SMART. That is right.

Mr. LARKIN. We left 67 as not less than three, which leaves it with an open end on the top, because we just cannot accurately judge whether three will be sufficient for normal times We anticipate it will, but it may be that three would be the necessity even in normal times of adding one or two more In the event tht you come upon an emergency, however, or you are in war and the case load increases tremendously, why we already have a provision for these temporary wartime——

Mr. ANDERSON. As long as you have that, why shouldn't there be a limitation?

Mr. LARKIN. Because as I say, we cannot at this minute guarantee, if you will, that the three-man court will be able to carry the work load in normal times We anticipate they will, but it is a little difficult, based on the court-martial figures that we have, to say with assurance that there will be no trouble in the three handling it Now you could say "no less than three nor more than five"

Mr. RIVERS. That is right.

Mr. LARKIN. And then for the time of the emergency, keep this other provision for wartime.

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Mr. RIVERS. That is right.

Mr. LARKIN. Where you might have to have, in other words, what amounts to branch offices or subsidiary panels, if you will—something the way the Tax Court works.

Mr. RIVERS. Let us fix it where you can get rid of these people at such and such an age because some of these old boys—this is off the record.

(Statement off the record.)

Mr. BROOKS. You have a provision for retirement.

Mr. RIVERS. They wait until the very last minute and it might be too long. Is that 70 years?

Mr. LARKIN. That is right, 70.

Mr. RIVERS. Now, do we want this to be 70?

Mr. LARKIN. You have the precedent of 70. I should think that would be all right.

Mr. ELSTON. Well, I think we could say that they shall have the same qualification as judges of the United States Circuit Courts of Appeal, the same retirement provision and so forth.

Mr. LARKIN. We can. We said, "Each member shall receive compensation allowance equal to those paid to a judge of the United States." We could say, "compensation and other perquisites," if you will.

Mr. RIVERS. Let us write it out.

Mr. BROOKS. Would be subject to the same retirement laws.

Mr. RIVERS. That is right.

Mr. LARKIN. All right.

Mr. RIVERS. What about this? We also want to consider this, about whether or not you want any retired Government official holding on. Now some people might not like the retired Judge Advocate General, with all deference to the one present. But somebody may object to that.

Mr. LARKIN. Well, I think the way the provision is incorporated in the article now, it is all right. It says, "from civilian life," which would exclude officers of the Regular components and retired Regulars. A retired Regular, I should say, would be eligible if he resigned. If he just retired, he wouldn't be.

Mr. RIVERS. I don't know why you should exclude him.

Mr. LARKIN. Well, the notion specifically was to make this as civilian as possible, otherwise perhaps the court would consist of nothing but Regular officers who have resigned for the purpose of taking the job and in effect you would have it more military than civilian.

Mr. RIVERS. Of course it could work the other way, too. You could appoint a Reserve who would have animus toward the Regular.

Mr. LARKIN. Yes. That is the way it was designed: from civilian life, but not as it is designed under the National Security Act, which provides that the Secretaries, or the Secretary of Defense, for instance, cannot have served within the previous 10 years in a Regular component. It is not as strict as that and I don't think it should be.

Mr. RIVERS. What about that, Charlie?

Mr. ELSTON. Well, you probably would have to have some such provision if you were going to keep it strictly civilian.

Mr. LARKIN. I think the way it is provided just carries out what I point out: from civilian life, which means a civilian as distinguished

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from a military officer who is either on Regular service now or is a retired Regular who is still, of course, an officer of the United States. But it would not exclude a Reserve on inactive duty, or would not exclude anybody who has military service, of course.

Mr. RIVERS. Where do you get that distinction?

Mr. LARKIN. I think that has been defined time and again insofar as retired officers of Regular components and officers of Regular components who are actively serving.

Mr. BROOKS. Well, a retired officer is still a part of the Regular Establishment, isn't he?

Mr. LARKIN. That is right.

Mr. BROOKS. Therefore——

Mr. LARKIN. He is not from civilian life.

Mr. BROOKS. Therefore, he would be automatically excluded from the meaning of that term.

Mr. LARKIN. That is right.

Mr. RIVERS. You could conceive of a situation where there would be a marked feeling between Reserves and Regulars. It happened in many quarters after this war, as testimony before this committee will demonstrate and prove. And we sure don't want to get anybody on this court who has any feeling toward any segment of our active or inactive force. That is what we ought to try to guard against.

Mr. BROOKS. I think, after all, if you are going to have them confirmed by the Senate, you are fairly safe in getting men without strong predjudice. There is a screening there. And the Executive shouldn't want to appoint men of that character.

Mr. LARKIN. I should say the National Military Establishment might have a number of people who it would recommend to the President in the first place.

Mr. RIVERS. Surely.

Mr. LARKIN. He would screen them. Then the Senate screens them. So I don't think you are running any more danger here than you are in any other appointment.

Mr. BROOKS. What do you think of the name there: Judicial Council?

Mr. LARKIN. Well, we have no pride of authorship at all. Actually, we adopted it because it was a name that was adopted for the top court in the Army system, as provided last year by your committee. We just picked it up and carried it along. There is no fixed idea about it at all. If you have a different name, why——

Mr. BROOKS. Do you have any idea on that, Mr. Smart? Any fixed idea?

Mr. SMART. Well, of course, I don't think that the committee should adopt the term "Judicial Council" purely because we had it in H. R. 2575. In that case it applied to only one service, and also the members of the Judicial Council were to be general officers unless they were serving for temporary periods of 60 days or less, in which event they could be of lesser grade than general officers. Now here you are creating a court equally applicable, for purpose of review, to all of the services. They are civilians, not officers. I think you should adopt some judicial terminology and get away from this "Council," which suggests to me one of the usual basement operations here in Washington.

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Mr. ELSTON. How about "Supreme Court of Military Appeals," or "Court of Military Appeals"?

Mr. RIVERS. That is right.

Mr. LARKIN. I think so.

Mr. RIVERS. Then, too, this act does not repeal the Eleston Act?

Mr. LARKIN. It does.

Mr. RIVERS. You see, and those terms still maintain in that act.

Mr. LARKIN. No.

Mr. SMART. This will supersede the Judicial Council as presently constituted in the Department of the Army.

Mr. RIVERS. I see.

Mr. BROOKS. Now, "The Court of Military Appeals"—how would that impress the Navy?

Mr. LARKIN. We define military and have used it—we have called this a uniform code of military justice—to include the naval service.

Mr. ELSTON. The reason I suggested "Supreme Court of Military Appeals" rather than "Court of Military Appeals" is this: In some States, your court of appeals is your highest court.

Mr. RIVERS. That is right.

Mr. ELSTON. In other States, your supreme court is your highest court.

Mr. LARKIN. That is right.

Mr. ELSTON. Now, in New York, your supreme court is inferior to your court of appeals. In our State, the court of appeals is inferior to the supreme court. I don't like to get names too long. In other words, on the other hand, the "United States Circuit Court of Appeals" is longer than the "Supreme Court of Military Appeals." But we ought to have something that would be different than "Judicial Council." That sounds too much like a city council.

Mr. LARKIN. It sounds like a round table, instead of a court.

Mr. ANDERSON. Why don't you move it?

Mr. BROOKS. It seems to me it would give strength to the whole idea there.

Mr. ANDERSON. I think so, too.

Mr. BROOKS. Admiral Russell is here. I am wondering, would you make a suggestion, or do you have one, sir?

Admiral RUSSELL. "The Court of Military Appeals" seems all right to me.

Mr. ANDERSON. You mean leave out the "Supreme"?

Admiral RUSSELL. I wouldn't think you need that. You are not comparing it with any other appellate courts. The only appellate court there is is in the service.

Mr. BROOKS. I think perhaps that thought is good, too, because, after all, while this is supposed to be the supreme body, there is a way to go higher than that, and that is to the President; is there not?

Mr. LARKIN. Of course. And there is still a way to go to the Supreme Court of the United States, actually, and that is by habeas corpus.

Mr. ELSTON. I think the shorter name is preferable. The only reason I suggested "Supreme" is because someone said if you say "Court of Appeals," it might imply that there is a supreme court above that.

Mr. LARKIN. Yes.

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Mr. ELSTON. And, of course, there isn't.

Mr. LARKIN. We would accept the "Military Court of Appeals."

Mr. BROOKS. Make a suggestion to leave off the word "Supreme

Mr. ELSTON. I would suggest, Mr. Chairman, to bring the issue to a vote, that we make it "The Court of Military Appeals."

Mr. RIVERS. Seconded.

Mr. BROOKS. You heard the suggestion made as a motion. Is there any objection to it? If not, then it stands adopted.

Now, suggestions have been made regarding two or three other matters and we haven't passed judgment on them.

Mr. ANDERSON. Mr. Chairman, I would like to bring that limitation to a head by offering a motion, if I may.

On page 54, line 20, after the word "three"—

Mr. BROOKS. What article?

Mr. LARKIN. 67 (a).

Mr. ANDERSON. Article 67, page 54.

Mr. BROOKS. Yes.

Mr. ANDERSON. Line 20, after the word "three," insert "nor more than five." I think with the provision in 68 (b) for the appointment of additional members of the Judicial Council in the event of an emergency, that that gives us a desirable limitation in time of peace.

Mr. RIVERS. After the word "member," put "no more than *five*".

Mr. BROOKS. After "three"——

Mr. ANDERSON. It will read, then, "The Judicial Council shall be composed of not less than three, nor more than five members." I would like to have the service comment on that before we proceed.

Mr. BROOKS. Let us see what the comments are. Would it be better to have seven or five there? How would that work in reference to two panels?

Admiral RUSSELL. Are you asking me, sir?

Mr. BROOKS. Well, I was really speaking to Mr. Larkin, but we would be very happy, Admiral, to have your ideas on it.

Mr. RIVERS. We could have two panels if we had seven.

Admiral RUSSELL. I haven't thought this through, Mr. Chairman, but, as I was sitting here, I was thinking we frequently have court martials appointed with the provision that any five are empowered to act. I don't know whether that would have any application here or not.

Mr. ELSTON. I don't think so. It is a separate creation.

Mr. BROOKS. If you have three and not more than five, you are going to have three constituting a court and then you will have two left. Now, how that two actually will help a great deal I don't know.

Mr. ELSTON. The thought that occurs to me, Mr. Chairman, is this: If the appointments are made they are going to be for life. Now if you have a period of emergency and you appoint five, and they are for life, they are going to stay on the court until they die or retire, whereas if you have a definite number plus this provision that allows emergency appointments, the emergency appointees would remain only until the close of the emergency and the President would then have the right to remove them. Suppose you said "less than *three* nor more than five" and the law went into effect immediately. There would probably be enough cases to justify five at the present time. Now that means five from hereon in.

Mr. LARKIN. That is right.

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Mr. RIVERS. Until two of them die or retire. I am wondering whether it would be better to have a definite number, say three, plus the temporary appointments that the President might make. What do you think? I would like to ask Mr. Anderson, the one who offered the motion, what he thinks.

Mr. ANDERSON. You mean you would amend that so that it would be not less than three nor more than three?

Mr. ELSTON. The thought just occurred——

Mr. ANDERSON. Or just say three members?

Mr. ELSTON. We should make it a definite number, who will be lifetime appointees. When if their work load gets too heavy, the President can add one, two, three, five, or any number he sees fit.

Mr. LARKIN. Perhaps you could do it this way, Mr. Elston. If you desire to limit it to three as the permanent ones, then in 68 (b) you could modify it so that in time of emergency the President could appoint one or more courts of three——

Mr. BROOKS. Panels.

Mr. LARKIN. Panels, really, what it amounts to, or one or more temporary judges.

Mr. DEGRAFFENRIED. Mr. Larkin——

Mr. LARKIN. Otherwise, if you provide for three permanent judges and then find the work load is heavy for six months and you want another, you could only appoint him permanently. Perhaps you ought to have the right to appoint another in peacetime temporarily, and then in wartime appoint temporarily a whole subsidiary panel or two panels, if needed.

Mr. DEGRAFFENRIED. Mr. Larkin, if he just appointed one, though, so that you had four there for a while and two went one way and two went the other, there wouldn't be any decision.

Mr. LARKIN. That is right.

Mr. DEGRAFFENRIED. It seems to me you have to keep an odd number there.

Mr. LARKIN. Well, you would have a decision, in that I suppose the tie vote would act as an affirmance.

Mr. BROOKS. What we would have to do, as things are now, we are going to have to change over here in article 68 the usage of the term "Judicial Council".

Mr. LARKIN. Oh, yes.

Mr. BROOKS. And if we follow that thought, we are going to have to go further and place there "one or more temporary panels be set up," instead of referring to "Judicial Council additionally set up." Then we are going to have to specify that they shall be subservient to the court.

Mr. LARKIN. I think if you make it three in 67 (a), we can carry through the idea by adding to 68 (b) the provision for the temporary appointment of one or two judges in the President's discretion and in time of emergency or hostilities the temporary appointment of one or two panels.

Mr. BROOKS. Operating in cooperation with the Supreme Court?

Mr. LARKIN. Yes. I think that would work.

Mr. SMART. What is an emergency?

Mr. LARKIN. Perhaps we'd better say, "in time of war or emergency."

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Mr. ANDERSON. I thoroughly agree with the idea expressed by Mr. Elston that we limit it to three members and make that line read, "The Judicial Council shall be composed of three members period."

Mr. BROOKS. Mr. Anderson withdraws his motion and now moves that the court be limited to three members; is that right?

Mr. ANDERSON. Yes. Strike out the words "not less than."

Mr. BROOKS. Strike out the words "not less than." Is there any objection to that thought? If not, then the motion is agreed to.

Mr. SMART. Mr. Chairman, does the committee desire to refer to these appointees as members or judges?

Mr. HARDY. I think in that case it would be members there; that is, members of the court.

Mr. ANDERSON. It is going to be called "The Court of Military Appeals." Wouldn't they have to be judges?

Mr. SMART. Of course, once they are on, they become a judge. I just wanted to point out that little difference in there. You may wish to consider it or leave it as it is. I have no particular feeling. The statute as to Federal courts says "judges" specifically.

Mr. BROOKS. Now, how far do we want to go toward making this a Federal court?

Mr. SMART. Well, it becomes a specialized Federal court.

Mr. BROOKS. What is the pleasure of the committee? It seems to me it makes very little difference there.

Mr. ELSTON. You do say members of a court.

Mr. BROOKS. And Members of Congress, too.

Mr. ELSTON. And Members of Congress. So you would be saying members of the Court of Military Appeals.

Mr. BROOKS. I think, too, to refer to them as members is more in harmony with what you have in your court-martial procedures all the way through. It refers to members of a court. Is that right? All of them are called members.

Mr. ELSTON. Members of the court, yes. I notice as to the Court of Appeals of the United States it says "there shall be in each circuit a circuit court of appeals"—they have changed the name since to Court of Appeals—"which shall consist of three judges." They use the word "judges."

Mr. BROOKS. Well, if there is no motion to offer it, let us pass on to something else.

Mr. ELSTON. Mr. Chairman, wouldn't we now have to amend subsection (b) of article 69?

Mr. BROOKS. Yes.

Mr. ELSTON. To provide that in time of emergency the President may direct that one or more temporary courts be established for the period of the emergency, each of which shall be under the general supervision of the Judicial Council.

In other words, if the work load gets heavy he would have to appoint an entire court of three members.

Mr. SMART. Well, the idea was that if the work load gets heavy by virtue of a state of war or state of emergency——

Mr. ELSTON. Say in time of emergency.

Mr. SMART. That is right.

Mr. ELSTON. In other words, there would be no advantage in appointing one member because three members have to make a decision.

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Mr. SMART. That is right.

Mr. ELSTON. And there would be no advantage in appointing two members. You would have to take a member away from the other court.

Mr. PHILBIN. This section permits them to set up the number of councils required by the emergency, doesn't it?

Mr. ELSTON. Yes; it would permit the President to appoint emergency courts. But the thought now is should he be permitted to appoint one member of if he makes any appointment he has to appoint three.

Mr. PHILBIN. He would have to appoint three under this language.

Mr. ELSTON. It seems to me the only way you could handle the matter would be to appoint three.

Mr. PHILBIN. Wouldn't they have to be constituted as a unit?

Mr. ELSTON. Yes, that is it, what the amendment says—

The President may direct that one or more temporary judicial councils be established.

It doesn't indicate members. It just says "three or more temporary judicial councils."

Mr. BROOKS. Why not let it read this way:

In time of emergency the President may direct that one or more panels of three members be established for the period of the emergency, each of which shall be under the general jurisdiction of the permanent court.

Mr. PHILBIN. Don't you think that language is clear enough—"one or more temporary judicial council?" That language certainly implies that the appointment shall be made as three members and a separate judicial council shall be set up.

Mr. BROOKS. Off the record.

(Discussion off the record.)

Mr. BROOKS. Back on the record.

You have to have every temporary panel in some respects under the direction of the permanent court.

Mr. ELSTON. And yet you don't want the permanent court able to overrule them, do you, on a decision, in a particular case? If you are going to do that, there is no use in having the separate court.

Mr. BROOKS. Of course, the way the Federal court does in so many cases where they set up a temporary panel, say the Court of Appeals, is they will assign a certain number of permanent judges to the temporary panel. The Court of Appeals does that often and in that way tries to harmonize the jurisprudence.

Mr. ELSTON. Of course, they have a different situation, because they have a large number of judges and they have the power to assign them to various jurisdictions to help a particular court catch up with its docket.

Mr. BROOKS. Coming back, then, to Mr. Anderson's suggestion, would it be better to have a permanent court of, say, seven members that can sit in separate panels and in the event of an emergency, temporary panels be brought in?

Mr. ELSTON. Well, I would think, Mr. Chairman, that if you are going to do that, you are going to create perhaps more lifetime jobs than are necessary. You would create seven lifetime judgeships and after a few years, with the war over, there might be not enough work

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for seven. Then you have a little clumsy situation there. You would have three in one court and four in another.

Mr. BROOKS. Well, I merely suggest seven, but you might come back to five.

Mr. ELSTON. It seems to me——

Mr. BROOKS. I am not urging that. I am just pointing it out to you. I wasn't entirely unfriendly to the suggestion originally made by Mr. Anderson.

Mr. PHILBIN. Don't you think that is somewhat unwieldy, to have a body of five or seven? This more closely resembles the circuit court of appeals, rather than an individual district court.

Mr. BROOKS. What is the average circuit court of appeals number?

Mr. DEGRAFFENRIED. Three.

Mr. PHILBIN. Three.

Mr. LARKIN. How about this possibility, of having three permanent judges and then a provision for appointing additional ones either in groups of three or otherwise and then having of the total permanent and temporary judges any three authorized to sit as a court, on the theory that during heavy peak load you would have one of the permanent judges sitting with several of the temporary ones, and then give each three who sit as a court and who constitute a quorum of the court power to finally decide whatever cases is before them, leaving the three permanent judges with the function of this yearly review?

Mr. ELSTON. I would see no objection at all to that. In fact, I think that is the way it should be.

Mr. LARKIN. Yes.

Mr. BROOKS. Of course, if you do that, then you are going to have to provide here that one judge shall be nominated presiding judge, with authority to make those assignments.

Mr. LARKIN. Well——

Mr. ELSTON. Well, that is detail that can be worked out.

Mr. LARKIN. That is right. I don't think there is any great problem to that. I think we can work that out right in here. I think that is the most flexible. You would make a provision that at least one permanent judge and two others are a quorum of the court at any time and then when the emergency is over, you drop your temporary judges.

Mr. ELSTON. Yes. If you didn't have some such provision, one of the members of the permanent panel court might become incapacitated and they couldn't reach out and bring in some other judge to serve in his place.

Mr. LARKIN. That is right.

Mr. BROOKS. If there is no objection, then, I will suggest that Mr. Smart and Mr. Larkin be authorized to draft appropriate language which we can pass on later on.

Mr. ANDERSON. Mr. Chairman, may I ask one more question in connection with subsection (b) of article 68?

Mr. BROOKS. Yes.

Mr. ANDERSON. In time of emergency, just what constitutes an emergency? When it is declared by the President or the Congress to exist or do you mean in the event—well, say that the present emergency and the war are eventually declared terminated?

Mr. LARKIN. Yes.

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Mr. ANDERSON. But there is still a work load that constitutes an emergency as far as review of cases is concerned?

Mr. LARKIN. No; we didn't contemplate that kind of an emergency.

Mr. ANDERSON. That is what I wanted to know.

Mr. LARKIN. We mean a national emergency. The state of emergency was the idea here. The fact that there is a local emergency in the court was not contemplated.

Mr. BROOKS. Suppose your work load does get too heavy, why shouldn't it be interpreted to mean any emergency which throws the court far behind in its work?

Mr. LARKIN. Then, I would take out the word "emergency" and say "the President, in his discretion."

Mr. ELSTON. Why wouldn't it be better to say "in time of emergency declared by the President or by Congress to exist"?

Mr. ANDERSON. I was afraid that limited it too much.

Mr. LARKIN. That is what we intended it to be.

Mr. ANDERSON. My thought, Charlie, is it might not be a national emergency declared by the President or the Congress to exist but simply an emergency because there are so many cases to be reviewed when there is no national emergency.

Mr. LARKIN. I think I should say there, if the court falls behind during the course of its work for a year, Heaven knows the Federal courts and many State courts are behind for years and years. It is not desirable at all, but it wouldn't last so long that we couldn't come back to Congress and point it out and get an authorization for an additional number.

Mr. PHILBIN. That is right. You could always come back for authority to appoint an additional number.

Mr. BROOKS. But there is this about it. One of the great criticisms I hear now about military justice is the delay. And I have heard this group here refer to the fact that in many cases a man serves out his sentence before he has a hearing on his appeal. Now, if we are going to sit back and let this court get as far behind as some of these Federal courts are in the handling of the cases, then, these men are going to serve their sentence long before they are disposed of here by the Appellate Court.

Mr. LARKIN. That is very undesirable, I agree.

Mr. BROOKS. These are all criminal cases. Now, a civil case may rock along for years without a serious injustice being done. But not so with a criminal case. It ought to be disposed of promptly.

Mr. LARKIN. Well, as I understood it and as Colonel Dinsmore, at least, testified before the committee, as far as the appellate end of processing cases is concerned, it has not been and is not now long. His guess was that it was completed within 2 or 3 months. I think there has occasionally been some complaints about delay in bringing men to trial. Of course, there have been complaints about bringing them to trial too quickly. So it is an individual case problem pretty much. During the war, of course, I dare say there was considerable delay in the processing of appeals, and that would be the time at least where you could come forward with these emergency extra members. But I have no strong feeling on it one way or the other, frankly.

Mr. BROOKS. Do you think this council will be able to keep down to date with their cases?

Mr. LARKIN. I think so.

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Mr. BROOKS. As written now?

Mr. LARKIN. I think so.

Mr. BROOKS. And there is no reason for giving any emergency power during time of peace to the President to increase the panel?

Mr. LARKIN. Well, it would be safer that way.

Mr. HARDY. Well, Mr. Chairman, since these are going to be temporary appointments anyway, I don't see any serious objection to granting wider discretionary powers to the President. If you have a heavy work load, it may be necessary to appoint an additional number of members for a very short period of time to clean the thing up. It seems to me we ought to make provision for it in here and broaden this word "emergency" by some other phrase. I don't see where it could hurt anything since these are going to be purely temporary appointments.

Mr. PHILBIN. Roughly, how many general courts martial are you having per month in the Armed Service?

Mr. LARKIN. Sir?

Mr. PHILBIN. Do you have any information as to how many general courts martial you are now having per month?

Mr. LARKIN. Yes, I do.

Mr. PHILBIN. Would you give that to us roughly?

Mr. LARKIN. Well, the Army is running about 575 a month.

Mr. PHILBIN. These are general courts martial?

Mr. LARKIN. General courts martial. The Air Force is averaging 150. I will have to calculate the Navy's, unless Admiral Russell knows offhand.

Admiral RUSSELL. About 460 a month.

Mr. ANDERSON. What does that total?

Mr. PHILBIN. Around 1,185 per month.

Mr. LARKIN. That is trials.

Mr. ANDERSON. How many might go up to the Judicial Council?

Mr. LARKIN. That is it. I don't know what percentage has pleas of guilty, which probably would——

Mr. PHILBIN. These are actual trials?

Mr. LARKIN. That is right, which would create no legal problem.

Mr. PHILBIN. These don't refer to pleas. I mean you are talking about trials.

Mr. LARKIN. That is right.

Colonel DINSMORE. Mr. Chairman, I made some figures for the Army and offer them for the record at this time.

Mr. BROOKS. Without objection, it is so ordered.

(The matter referred to is as follows:)

ARMY ESTIMATE OF NUMBER OF CASES WHICH THE COURT OF MILITARY APPEALS WOULD HAVE AUTHORITY TO REVIEW UNDER THE PROVISIONS OF H. R. 2498, EIGHTY-FIRST CONGRESS

In estimating the volume of work of the court of military appeals under the uniform military code, it is assumed that the court will receive applications in all cases which it is empowered to review. Any other assumption would amount to mere speculation. It is not to be supposed that a person convicted by a court martial will be content with an unfavorable decision by any but the highest authority. Although the court of military appeals may refuse any such application, it can do so intelligently only after a careful examination of the contentions presented.

During the World War II fiscal years 1943–46, inclusive, the approximate number of general court-martial cases tried by the Army (including Air Force

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cases, which were then tried by the Army and which it is impracticable to segregate) averaged slightly more than 24,800 per year. The best available information indicates that approximately 15 percent of these cases resulted in acquittals or sentences which did not include dismissal or dishonorable discharge.

During the same period the approximate number of cases tried by Army special courts-martial (including Air Forces cases) averaged 102,000 per year. During this period Army courts did not have authority to adjudge bad conduct discharges. It is estimated, however, that had such power existed at least 6 percent of these cases would have resulted in sentences which included bad conduct discharges.

Latest available figures indicate a peacetime average of Army general court-martial trials per year of approximately 6,600. Deducting an estimated 15 percent for cases resulting in acquittals or sentences not including dismissal or dishonorable discharge leaves a balance of approximately 5,600 Army general court martial cases per year.

Based on latest available information the approximate number of cases tried by special courts-martial by the Army in peacetime will average 37,000 per year, at least 6 percent of which, or approximately 2,200, and probably more, may be expected to result in sentences which include a bad-conduct discharge.

Recapitulating the foregoing estimates on the basis of World War II experience gives a total in wartime of approximately 21,000 Army and Air Force general court-martial cases (24,800 less 15 percent) and 6,000 Army and Air Force special court-martial cases (6 percent of 102,000), or a combined total of about 27,000 cases per year, or more than 2,200 per month, which the Court of Military Appeals will be empowered to review.

In peacetime the approximate figures are 5,600 Army general court-martial cases (6,600 less 15 percent) and 2,200 Army special court-martial cases (6 percent of 37,000), or a combined total of about 7,800 Army cases per year, or 650 cases per month, which the court of military appeals will be empowered to review.

Colonel DINSMORE. I made a spot check for 1 year which I thought was fairly typical, to determine the number of cases which did not result in dishonorable discharges or, in other words, the kind of case that would not go to the Judicial Council, which are acquittals and cases not involving dishonorable discharges, roughly.

Mr. BROOKS. Yes.

Colonel DINSMORE. And the exact percentage was 14.8. So I took 15 percent. So you could take 15 percent out as cases which would not be eligible for consideration by the Judicial Council.

Mr. BROOKS. You mean out of 575 you would take 15 percent out?

Colonel DINSMORE. Yes, sir.

Mr. BROOKS. And those would be the cases that would not go to the highest tribunal?

Colonel DINSMORE. The 15 percent could not go and the balance could go.

Mr. BROOKS. The balance could go; 85 percent could go?

Colonel DINSMORE. That is right. I don't know about the Navy.

Mr. DEGRAFFENRIED. Do you have a judgment as to what percentage actually do go, Colonel?

Colonel DINSMORE. Of course, we don't know, Mr. deGraffenried, because this is new. I would say, and the Army feels, that the only safe assumption to make is that everybody who has the right to appeal to the Council will do so, on the theory that nobody is satisfied with a decision which involves serious consequences without a decision by the highest tribunal. Now, that doesn't mean the Council is going to take the case, you understand.

Mr. LARKIN. That is the point, you see. The Council will take the case only if good cause is shown by the petition. You must figure further the number of absence cases that are tried. The percentage

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varies in the service, but it runs anywhere from 50 to 75 percent. 5 to 75 percent of the cases are absence cases, which usually do not ha a serious question of law in them. Sometimes they are very simp cases. Unless the man can make out a good question of law in h petition, the Judicial Council won't entertain those cases. So it very difficult to judge how many it will be. We will just have to ha experience. It is speculative. But it certainly couldn't or will n be the full number of trials because some of them are pleas of guil and a large number of them are absence cases which give rise usual to no question of law.

Mr. PHILBIN. The colonel estimates that about 85 percent of the may go to the Judicial Council.

Mr. LARKIN. Yes; but he can't and I can't say how many of th 85 percent won't have a question of law, since a large proportion them are absence cases.

Mr. PHILBIN. That is right.

Mr. LARKIN. We just can't tell.

Colonel DINSMORE. That is true.

Mr. BROOKS. I would like to hear from the admiral——

Colonel DINSMORE. May I say one more thing? Will you excu me, sir?

Admiral RUSSELL. Surely.

Colonel DINSMORE. We would like to point out that although th Council is not going to consider all the cases that are sent to it b petition, those petitions have to be examined.

Mr. PHILBIN. That is right.

Mr. DEGRAFFENRIED. How many do you think the Judicial Coun or the court or whatever we call it should consist of?

Colonel DINSMORE. I haven't thought that out, sir.

Mr. BROOKS. Admiral.

Admiral RUSSELL. I think we could give you a fairly good estimate Based on the present strength of the Navy, we get about 460 cases month. Of that number, the type of case which comes to me becau the people in the office are in disagreement is very small, I would sa probably less than 5 percent. That would represent probably abo what I would feel should be referred to the Judicial Council.

Mr. PHILBIN. In other words, about 25 or 30 cases a month?

Admiral RUSSELL. Not over that.

Mr. PHILBIN. That would be true of the Army, Colonel? Do yo think that percentage would be higher in the Army?

Colonel DINSMORE. Our estimate would be very much higher.

Mr. PHILBIN. Why should there be such a disparity between th Army and the Navy with regard to those figures?

Admiral RUSSELL. Well, as I understand, the Colonel estimated th number that could go there. Surely, I agree that 85 percent of thes people that are convicted and appeal would be subject to that actio

Mr. PHILBIN. But you feel actually that you will only have 5 per cent who may go, and he says 85 percent may go. There is a wid disparity there.

Admiral RUSSELL. We are talking about two different things.

Mr. BROOKS. If all of the services have even your figure, that woul be almost a hundred cases a month?

Admiral RUSSELL. That is right.

Mr. BROOKS. Would your figure include the Navy, Marine Corps and the Coast Guard?

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Admiral RUSSELL. No, sir, just the Marine Corps and the Navy.

Mr. BROOKS. But not the Coast Guard?

Admiral RUSSELL. They don't come to us now. In time of war, of course, they would.

Mr. BROOKS. Yes.

Admiral RUSSELL. But I am not so sure. Of course, the total number gives you some kind of an index, but one case if it is close and if it involved and required a lot of research, might take up more time than 25 cases that go up on appeal.

Mr. BROOKS. And, of course, I can conceive this, too, that initially this military court of appeals might have a much heavier work load than it would subsequently. There are many points that must be ironed out initially.

Mr. LARKIN. That is right.

Mr. BROOKS. And after that, it might be your work load would drop off and that is the reason it occurred to me all along that perhaps it would not be too far out of order to permit the appointment of additional panels of the court even during time of peace.

Admiral RUSSELL. Yes, sir. I might say that this is one matter that I wanted to discuss. We talked about it just before the hearing. The more we can get shipshape before it goes to the Judicial Council, the less work there will be for that body.

Mr. PHILBIN. I desire to pursue the inquiry regarding the work load, as suggested by the gentleman from California, because I think we should determine here as closely as we could just what burden there would be upon the Council and provide for it, so that if it was a heavy burden they might come back here and seek additional legislation to create additional councils if required.

Admiral RUSSELL. There is one other comment I would like to make, namely, with the increased power of the special court martial, I look for a goodly reduction in the number of general courts. That is one of the supporting reasons for it.

Mr. LARKIN. Yes.

Mr. BROOKS. Thank you very much, Admiral.

Mr. PHILBIN. Do you think, Mr. Larkin, it would be safe or reasonable for us to go along with the proposal as now contained here in subsection (b), I believe it is, and then sort of test out for a certain period the number of cases coming before the Council and see what the work load is, and then if it is obvious that we ought to have additional councils we can provide for that?

Mr. LARKIN. I think that is the best way. It will be a little more flexible if you said, "The President, in his discretion," rather than limiting him to a term of emergency, but——

Mr. BROOKS. Why couldn't you be more strict than that and say "in time of national emergency" or "in time of judicial emergency"?

Mr. ELSTON. Well, Mr. Chairman, isn't it true that the work load would come on the court after the emergency is over? The cases really don't pile up until about the conclusion of the war.

Mr. PHILBIN. I hope we are not going to keep these boys in custody, when they are ready for an adjudication of their case. That is the purpose of creating additional councils, I take it.

Mr. ELSTON. I mean the emergency might be over, but they would still have a tremendous work load of cases. Technically we are still at war, but the emergency is over and you have a lot of cases on hand, haven't you?

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Admiral RUSSELL. We found after the last 2 wars that the work load lag is about 18 months.

Mr. BROOKS. Which is too long.

Admiral RUSSELL. However, I would like to invite the attention of the committee to this: The emergency—and I have forgotten whether it was a resolution or not before the Congress—was declared over for some purposes, but not for other purposes. I assume that this would be one of the things that would be considered.

Mr. BROOKS. Of course, if you permitted a dual construction in reference to that phrase, either a national emergency or an emergency in the court requiring additional panels, you would cover that.

Mr. LARKIN. Yes, That is——

Mr. ELSTON. Mr. Chairman, I am wondering whether some language something like this wouldn't be sufficient, then. Say in time of national emergency or otherwise, whether the court of military appeals is unable to expeditiously dispose of pending cases, the President may direct that one or more temporary courts of military justice of three members each be established for the period of such emergency or until pending cases may be disposed of, each of which shall be under the general supervision of the Judicial Council.

Mr. PHILBIN. Does the gentleman offer that as an amendment?

Mr. LARKIN. Or work out that quorum notion.

Mr. BROOKS. Would you rather think about that a little bit or dispose of it right now?

Mr. ELSTON. I just offered that right now without giving it too much thought, more for the purpose of discussion than anything else.

Mr. PHILBIN. That would take care of the work load, apart from a national emergency.

Mr. BROOKS. Mr. Smart.

Mr. SMART. Mr. Chairman, I think the thinking of the committee is apparent. May I suggest that you pass this matter temporarily? It is apparent that the committee will not be able to dispose of this and the question of a corps which you agreed to take up this morning.

Mr. BROOKS. Yes.

Mr. SMART. I would like to say that Mr. Zuckert, Assistant Secretary of Air, is here now and the hour is 11:20.

Mr. BROOKS. Mr. Larkin and you, Mr. Smart, sense the situation here in the committee. Would you get together and sort of frame language patterned along the line that Mr. Elston suggested?

Mr. LARKIN. Surely

Mr. SMART. We can frame some alternative propositions for the committee's consideration.

Mr. ELSTON. I have to leave, Mr. Chairman, in about 15 minutes to go over to the Supreme Court to move the admission of some important people.

Mr. HARDY. Mr. Chairman.

Mr. BROOKS. Mr. Hardy.

Mr. HARDY. There is just one point in connection with 67 (a) that we discussed a moment ago but which we didn't finish. I think we can dispose of it right quick. That is at the end of the paragraph affecting retirement.

Mr. BROOKS. Yes.

Mr. HARDY. I don't know whether this is appropriate, but to see if we can wind it up, I suggest the addition of a sentence: "Retirement

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ıws relating to members of the United States court of appeals shall pply also to the permanent members of the Court of Military ppeals."

Mr. LARKIN. Yes. We will provide for that.

Mr. ELSTON. And is it clear that they must be confirmed by the enate?

Mr. LARKIN. Oh, yes.

Mr. BROOKS. Is there any objection to that motion there made by Ir. Hardy? If not, why, it will stand adopted.

In going over this now, if any of the language we have adopted here ı these amendments needs polishing up at all, why, I suggest that ou take care of that.

Mr. LARKIN. We intend to do so and then bring it to your attention.

Mr. BROOKS. All right.

Mr. PHILBIN. May I inquire, in article 67, on line 23 of page 54, hether you would change the qualification for membership on the ouncil?

Mr. LARKIN. Now, you haven't as yet.

Mr. PHILBIN. You confine it to the Supreme Court. I wonder, as it been brought to the attention of the committee?

Mr. LARKIN. No, sir. It has been commented upon by witnesses. he committee indicated that they thought it was a poor standard. think we could go back to the standards we used——

Mr. BROOKS. How about the United States court of appeals?

Mr. PHILBIN. I think the language you used heretofore in the bill ould probably be better language than this language.

Mr. LARKIN. Yes.

Mr. SMART. A member of a State bar or a member of the Federal ar.

Mr. LARKIN. Yes.

Mr. ELSTON. I take it we still can go back over this whole thing.

Mr. LARKIN. Yes.

Mr. BROOKS. Let us go on. Since we have witnesses who were sked to come at this particular hour and if there is no objection, let s hear from them. Just come up, sir. We are happy to have you ere.

Mr. ZUCKERT. Thank you, Mr. Brooks.

Mr. BROOKS. The committee has been looking forward to your ppearance.

Mr. ZUCKERT. Thank you, sir. It is a pleasure to appear here on ehalf of the Secretary of the Air Force and the Chief of Staff to tell ou our views on this question of a corps in the Air Force.

I have here a short, rather informal statement which I might read nd then I will be prepared to discuss it with you as you wish.

TATEMENT OF EUGENE M. ZUCKERT, ASSISTANT SECRETARY OF THE DEPARTMENT OF THE AIR FORCE

Mr. ZUCKERT. We appreciate this opportunity of presenting the ir Force views and we want to tell you this morning how we intend o operate under this new code if we do not have a corps. We feel hat the bill as written provides the essential protection for all con- erned and we trust that this committee will not feel that any organiza- ional changes are needed within the Air Force. I am not going to

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dwell on the differences between the military and civilian just requirements because Under Secretary of the Navy Kennedy, I thi covered that subject in excellent fashion. We, in the Air Force, f that under our present plan of operation plus the basic protections this bill, justice will result to our people. I don't need to go thro the safeguards that are in the bill, the requirement for a thorou impartial investigation, the requirement for a complete record, a the requirements for legal training. But all those cumulative r quirements we feel constitute a basically sound system. One of t requirements that is not original in the bill that we feel is a real p tection is the requirement that there shall be no censure or coer by any military authority upon the members of the court in resp to any case tried before them. In making that a military offense, feel that has a strong moral effect.

The Air Force is in a unique position, starting out fresh as we a We have been told many times by members of the Congress and peo in the Government how fortunate we are to have the opportunity start with a clean slate organizationally. We have no corps. We r for the furnishing of our technical service on the Army. At the pr ent time we have Air Force people. They are all Air Force peo We have no legislatively imposed attachments on our organizatio structure as it is at present. We consider this problem of organi tion, the proper organization of the Air Force, one of the most imp ant we have. And there is at this time in my office, as the Assist Secretary for Management, a study of the basic legislation that we considering which will describe the organization that the Air F should have. It will take into account not only the way we sh organize our legal officers, but all across the board: Chaplain, medi and so forth. We feel, in view of the fact that this bill does have many basic protections in it and in view of the fact that no system organization by itself can cure anything, that from the point of v of the Congress and the efficient operation of the Air Force, it wo be much more preferable to look to our organization as a whole ra than this little segment in respect to one aspect of our operati The Judge Advocate General obviously is seriously concerned w military justice, but beyond that he is also the chief legal adviser the Chief of Staff of the Air Force. He is the counsel for the Chief Staff. There are many legal problems in the Air Force that ha nothing to do with military justice. We use our lawyers in the p curement field. We use them in regard to all the real-estate law. W feel that by setting aside or by setting apart lawyers just in the milit justice field as opposed to lawyers in the procurement field, and law in the matter of real-estate law may, and we feel will, be creating artificial subdivision that is not necessary and does create a cer amount of insulation. It does not permit you to administer your w operation, we feel, as efficiently as if these officers, all lawyers, in Air Force, were treated in the same manner. I might say that I a lawyer myself and I feel that we can, through proper administra action under the control of the Secretary of the Air Force, give pr recognition to the professional standing and professional requirem of the lawyers.

I lost my place here, but I think I have covered most of the poi We do have an Air Force Judge Advocate General whose position w established by Public Law 775 in the Eightieth Congress. His dep

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nent within the Air Force has already been established by administrative action. He has developed the regulation for the procurement f judge advocates, for the size of his departments and for the duties f his department. He has the responsibility for selecting legal officers o be judge advocates and for passing on the qualification of law nembers, trial counsel, and so forth. In practice, in actual practice, nder good administration, his recommendations will determine the ssignments to command. And the staff judge advocates will determine assignments within the command. Briefly, we feel that under he present system and operating as it does, the Judge Advocate ieneral does have full control over all legal personnel engaged in the onduct of military justice. It has been argued, and of the best rguments, I think, is in connection with this matter of efficiency ratngs: How can you have command people rating lawyers on the perormance of legal duties? Well, as I pointed out, the Judge Advocate ieneral is, in fact, the attorney of the Chief of Staff on many other natters except military justice. It is right that he should be evaluated or his ability to get along with people and for his ability to do the ob effectively by the military commander. There is a strong argument—and we are studying the problem in the Air Force—an the possiility of having dual ratings, one by the military commander on the eneral effectiveness of the officer within the administration and the econd a technical rating by the legal superior of the particular legal fficer.

Well, that is about all I have to say. That covers my points and would be glad to answer any questions that you may have.

Mr. BROOKS. May I ask you this question, sir. Is there a shortage f lawyers in the air establishment?

Mr. ZUCKERT. Yes, sir.

Mr. BROOKS. About how many do you need there?

Mr. ZUCKERT. I haven't those figures. Major Alyea, have you the gures on our requirements?

Major ALYEA. We have about 274 and we want to build it up to 750.

Mr. BROOKS. Are you having difficulty in getting them?

Mr. ZUCKERT. We are having difficulty; yes, sir.

We are having difficulty getting any type of specialist whether it is ngineers of whom we use a lot or the other specialists. All the varied pecialists whom we require in a complicated operation like the Air 'orce are difficult to get under present conditions. We have the same roblem of procurement at Wright Field, for example, where we need ie experienced technical people that we have in respect of the legal rofession.

Mr. ELSTON. What is the situation with respect to the number of ending cases? Are you disposing of them rather expeditiously or ot?

Mr. ZUCKERT. Well, I don't remember the exact date we took over ur courts martial jurisdiction, Mr. Elston, but we haven't had the roblem of our own courts martial jurisdiction very long. How long as that, Major Alyea?

Major ALYEA. Since June 25, 1948.

Mr. ELSTON. You have quite a load of cases on hand, haven't you?

Mr. ZUCKERT. We have a big load of cases.

Mr. PHILBIN. How many cases are you getting per month?

Mr. ZUCKERT. I don't recall the figures.

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Mr. PHILBIN. Does the colonel have that?

Mr. LARKIN. I was furnished with the figures. Perhaps I can be there. The average in the Air Force at the present time, I understand, is about 150 per month. That is general courts.

Mr. PHILBIN. They have had jurisdiction only since June?

Mr. ZUCKERT. Nine months; yes, sir.

Mr. BROOKS. At least, you are not more than 9 months behind in any case, are you?

Mr. ZUCKERT. That is right.

Mr. ELSTON. How many cases do you have on hand undisposed of?

Mr. ZUCKERT. I don't know, Mr. Elston.

Mr. ELSTON. Can you get those figures for us?

Mr. ZUCKERT. Yes, sir; we can furnish you those figures.

Mr. ELSTON. Would you say it is a rather large number?

Mr. ZUCKERT. I don't believe so; no, sir. There hasn't been time for the cases that have come up through the appellate system to get up there to any great extent, seeing that we have only been in business 9 months.

Mr. ELSTON. You mean cases that originated before you were set up as a separate entity are being disposed of by the Army?

Mr. ZUCKERT. No. We have taken over all courts martial jurisdiction, sir. I just don't have the figures, sir. I can supply them for you.

Mr. PHILBIN. Do you have an acute need of lawyers in your court-martial branch in the sections where you are dealing with appeals from courts martial decisions?

Mr. ZUCKERT. The Judge Advocate General has filled up his complement of lawyers within the Judge Advocate General's system. We need a greater quantity of lawyers throughout the Air Force. We have had to make inducements. For example, there has been a provision raising the age limit for lawyers at which they could come in and get regular commissions.

Mr. ELSTON. You have a separate Medical Corps, haven't you?

Mr. ZUCKERT. Not in the Air Force; no, sir.

Mr. ELSTON. You do in the Army.

Mr. ZUCKERT. Our medical officers come to us from the Army.

Mr. ELSTON. Well, the Army has a separate Medical Corps.

Mr. ZUCKERT. That is right, Mr. Elston.

Mr. ELSTON. Now, could you give any particular reason why you couldn't have a separate legal corps?

Mr. ZUCKERT. You could, sir.

Mr. ELSTON. If you have a separate Medical Corps?

Mr. ZUCKERT. You could, sir.

Mr. ELSTON. Is there any reason for one and not for the other?

Mr. ZUCKERT. Yes, sir. And that is my principal reliance before this committee. Your medical people are limited to taking care of the health of your personnel. They don't go across the board administratively. They are not in your procurement field, for example. They are not concerned with real estate. They are not concerned with the great number of other things. Well, what I mean is the lawyers we have do go across the board. The doctors are merely concerned with this single problem of health. They are not concerned with anything that has to do with general administration.

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Mr. ELSTON. Well, would it not be possible for your legal corps to handle all legal problems, that is, military trials and all matters pertaining to military justice, contracts, and every other legal question?

Mr. ZUCKERT. Yes, sir; it would be possible. But we feel it would be seriously undesirable because then you have created this insulated group that has such a strong effect upon the administration of your entire operation. They are off by themselves. They are an entity. They are a service organization which it is very difficult to touch and control in respect to your administrative problems.

Mr. BROOKS. Let me see if I get your idea. Your idea there is that the lawyer is needed in practically every phase of the air work.

Mr. ZUCKERT. That is right, sir.

Mr. BROOKS. And if they were insulated in a separate corps, they would not be available as readily certainly as they now are, without a corps; is that the thought?

Mr. ZUCKERT. That is right, sir, and as we develop we should be able to use lawyers in administrative jobs, too, just the way many of our lawyers in civilian life are in top administrative jobs in the Government. We want to be able to use the lawyer in the Air Force for his ability.

Mr. BROOKS. Let me ask you this, then, sir. If you had a corps, would that result in reducing the number of lawyers you use or increase the number?

Mr. ZUCKERT. If we had a corps——

Mr. BROOKS. Corps; yes.

Mr. ZUCKERT. It would reduce the availability of those officers for general assignment.

Mr. BROOKS. What about the numbers, though, needed?

Mr. ZUCKERT. You mean if we had a corps, a Judge Advocate General Corps——

Mr. BROOKS. Yes.

Mr. ZUCKERT. Would we need more lawyers in the Air Force than under the present circumstances?

Mr. BROOKS. Yes, sir.

Mr. ZUCKERT. Well, the tendency would be, Mr. Brooks, if I know anything about government, to get more and more of your lawyers into administrative jobs within the corps because there is the separate administration of the corps. Administrative jobs have an attraction and you would be denuding your lawyers by putting them into those jobs in connection with the administration of the corps.

Mr. HARDY. What you are saying is if you set up a separate corps, you would run into difficulties within the Air Force similar to the difficulties of unification that faces the Secretary of Defense at the moment?

Mr. ZUCKERT. Sir, that question is pretty broad in its scope.

Mr. HARDY. It is broad in its scope, and the problem you are raising is broad in its scope. I can't follow you. I don't know why you can't control them if you have them set up in a corps.

Mr. ZUCKERT. You can't control them if they are a separate administrative group with their own promotion list and running their own show apart from commend.

Mr. HARDY. But that doesn't have anything to do with the operation of the corps, even if they have a separate administrative group.

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You have a separate administrative group in the Air Force and you have one in the Navy and you have one in the Army. It is the job of the Secretary of Defense to make them work together. And what is the reason why the Secretary of the Air Force can't make the corps work with all of the other activities of the Air Force? You are admitting a weakness, aren't you?

Mr. ZUCKERT. I am admitting an organizational weakness in the corps system, yes, sir.

Mr. HARDY. Aren't you admitting an administrative weakness also?

Mr. ZUCKERT. I don't believe so, sir. I think the way organizations tend to function, when you set up a separate compartment with, so to speak, the right to hire and fire, you lose your control over those individuals within that compartment. I don't think that is an administrative weakness. I think that is just the way organizations work, sir.

Mr. HARDY. Of course, I can appreciate the fact that the Air Force has worked out their plan of organization and they think they have a good one, and there is always price in creation and perhaps a justifiable price. It may be that the Air Force have worked this thing out in a way that will produce efficiency. But how can the Congress determine that in the future a loosely held proposition of that kind will operate in the interest of promoting justice to these people that are coming up for courts martial?

Mr. ZUCKERT. Well, Mr. Hardy, you have the same problem, if I may say so, in connection with the spending of money. You have the problem of the review by the Congress of the efficiency of everything that the Secretary of the Air Force does. We don't have any pride in our organization plan which we are developing for the Air Force. But from the standpoint of starting off with something clean, without these artificial barriers inside an organization entity, we feel that it will promote efficiency within the Air Force, if we are allowed to start out on that premise. You are going to have the Secretary of the Air Force watching that problem. You are going to have the Judicial Council, composed of civilians, who are going to have a good perspective on this judicial system. They can tell you soon enough.

Mr. BROOKS. We have changed the name of that to the "Court of Military Appeals."

Mr. ZUCKERT. All right, sir, the Court of Military Appeals. I got here late.

Mr. HARDY. I am beginning to wonder if the Air Force is going to need different treatment all the way along the line from the other branches of the service——

Mr. ZUCKERT. We are not asking——

Mr. HARDY. I think, if we give consideration to this proposal not to require the Air Force to have a separate Judge Advocate General Corps, maybe it is wrong for the Army to have it. Maybe we ought to abolish it in the Army and get them all on the same footing. What do you think about that?

Mr. ZUCKERT. Sir, I can't speak for the Army.

Mr. HARDY. Well, if it is wrong for one, it would be wrong for the other, wouldn't it, from an administrative standpoint?

Mr. ZUCKERT. The Army is used to having corps. The Army has corps today.

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Mr. HARDY. Well, does that make them right?

Mr. ZUCKERT. That doesn't make them right; no, sir. It becomes question of the tail wagging the dog after a while.

Mr. HARDY. You think that maybe that is the case in the Army ow, that the tail is wagging the dog?

Mr. ZUCKERT. No.

Mr. HARDY. Either in the Judge Advocate General Corps or some ther corps?

Mr. ZUCKERT. No. It would do one of two things. If it is an rror——

Mr. HARDY. Maybe that was the case when the Air Corps was a art of the Army.

Mr. Chairman, that is all I have.

Mr. DEGRAFFENRIED. Mr. Chairman.

Mr. BROOKS. Mr. deGraffenried.

Mr. DEGRAFFENRIED. Mr. Secretary, without any Judge Advocate ieneral Corps there, you do follow the policy, don't you, of having he lawyers there who are better in courts-martial work to pursue hat rather than let them handle all these various things that you are alking about—real estate and the various other things?

Mr. ZUCKERT. That is right.

Mr. DEGRAFFENRIED. You don't let one try to handle various hings. In other words, a man tends to become good in some special ine of work that he is suited for and for which he studied, and you do ind out what their tendencies are and what they like best and what hey are best suited for, and use them in those categories?

Mr. ZUCKERT. Yes; we do. And that is a matter of personnel idministration within the Air Force, which is the responsibility of Gen- ral Edwards in respect to lawyers as it is in respect to everybody else.

Mr. BROOKS. Mr. Norblad.

Mr. NORBLAD. Well, after the war there were a number of boards ind committees set up to study the court-martial problem.

Mr. ZUCKERT. Yes, sir.

Mr. NORBLAD. I don't know how many there were—probably alf a dozen. In New York, the bar association had a group and the veterans' association had a group. It is my recollection that every one of those boards universally and uniformly recommended that there should be a separate Judge Advocate General Corps in the three services; is that correct; everybody that studied it?

Mr. ZUCKERT. I think, in general, when the problem has been studied by outsiders, they have agreed there should be a separate corps.

Mr. NORBLAD. And I think I can say without fear of contradiction that 99 percent of the men who had experience with the courts-martial system in the war, particularly with the Air Force, are very much in favor of a separate corps.

Mr. ZUCKERT. I can't deny that, Mr. Norblad. All I know is, looking at the problem as one of the people in the office of the Secretary of the Air Force, you realize, as I do, that there are definite problems in connection with corps administration.

Mr. NORBLAD. I think most people who did deal with the problem during the war feel that the prime way of getting away from the abuse is by setting up a separate corps; that is, the command abuse that occurred in the courts-martial system.

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Mr. ZUCKERT. And if I may say so, the case on the other which is our case, is that this statute hereby setting up these guarant under this system, we feel, is the way to do it, rather than by an a ficial administrative unit.

Mr. NORBLAD. Yes; I realize that.

Mr. ZUCKERT. Those are the two points of view.

Mr. BROOKS. I would like to ask you one or two more questio In approaching this from a new viewpoint, the Hoover Commiss recommended unification. How does the establishment of cor affect, or does it affect, unification generally?

Mr. ZUCKERT. The establishment of a corps in the Air Force a its effect upon unification?

Mr. BROOKS. Yes; on the establishment of a corps in the Navy any other service. How would it affect unification?

Mr. ZUCKERT. Well, if you made it uniform for all three, if it co be done practically, I suppose that would be the ideal way. As it the Navy is at one extreme and the Army is at the other, and I a beginning to think that we are in the middle in this proposition.

Mr. BROOKS. Yes.

Mr. ZUCKERT. We feel, though, that if you set it up, if you set the corps which has these definite disadvantages, you are creati something which is going to be very difficult to get rid of. And if is only done for the Air Force, it leaves the Air Force and the Army the one side and the Navy in a more favorable position to do th entire administrative job.

Mr. BROOKS. Well, thank you very kindly.

Are there any more questions?

Mr. NORBLAD. Mr. Chairman——

Mr. BROOKS. If not, sir——

Mr. BROOKS. Mr. Norblad.

Mr. NORBLAD. With reference to the statute, itself, specifica providing that the command influence shall not be used, as the statu does, I would like to know whether you think for a practical purp that if the command does use influence that anybody within the co mand is thereafter going to go in and file charges of violating t Articles of War against a man who is superior to him in comma In other words, if the general abuses his command influence over lieutenant who is doing judge advocate work, is the lieutenant th going in because the statute says so and file charges against his gene commanding him?

Mr. ZUCKERT. Well, sir; I will answer you this way——

Mr. NORBLAD. It is good in the law, but it still needs furth protection.

Mr. ZUCKERT. I think it needs something else, too, and that is tha there is the strong deterrent of it being a crime, so to speak, for th general to do it. To have it written out clearly in the statute that is in violation of the Articles of War will deter a lot of hasty action b commanding officers in attempting to exert improper control.

Mr. NORBLAD. I think that is right. You also have the situtati where he doesn't necessarily have to call down the court-marti board for their action. He can go into the officers' club, for instan and pass out a few remarks to members of the board, some board tha is going to try a case, and say, "I certainly hope that boy gets a st sentence," or "We ought to convict that man because he is not a go

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officer" or "enlisted man" as the case may be. In any event, he can exert his influence very indirectly.

Mr. ZUCKERT. I will agree with you. But I don't think you can beat human nature by setting up this enclosure.

Mr. NORBLAD. I think it will help.

Mr. DEGRAFFENRIED. Mr. Secretary, this bill starts out by saying, "A uniform code of military justice."

Mr. ZUCKERT. Yes.

Mr. DEGRAFFENRIED. That is the name of it.

Mr. ZUCKERT. Yes.

Mr. DEGRAFFENRIED. Now, if we had a separate Judge Advocate General Department for the Army and some other branches and not for the Air Corps, is there any way we could really justify that? Uniform means applied to all the services alike. In order to make it uniform, don't we either have to have one or not have one applicable to all the services?

Mr. ZUCKERT. We don't feel you do, Mr. deGraffenried, because this uniform code sets up the procedural guarantees: The way of carrying it on, what is a crime, and what is there that must happen in order to fully protect the rights of the accused. We feel that that is enough of a hold that you don't in addition have to prescribe the method of administration of the lawyers who are handling the cases in addition to prescribing this hold that this code does set up. I believe Professor Morgan testified here that we felt when we designed the code that the problem of organization, military organization, was outside the present concept of the code.

Mr. BROOKS. Any further questions?

Mr. HARDY. Mr. Chairman, just a comment. I am a strong supporter of the Air Force, but I declare it does look to me as though they are trying to get an awful lot of preferential treatment and be left with an awful lot of discretion.

Mr. BROOKS. Thank you very much, Mr. Secretary.

Unless you want to answer the observation there.

Mr. ZUCKERT. I feel I have to, Mr. Chairman.

Mr. BROOKS. All right, sir.

Mr. ZUCKERT. Mr. Hardy, if it were a problem of the Navy having a corps and the Army having a corps and we were trying to evade it, I would think there would be some considerable merit in your contention as focused in this case.

Mr. HARDY. I noticed the Navy representative was shaking his head a moment ago when you were making the observation that the Army was on one extreme and the Navy was on the other extreme, and you were in the middle.

Mr. BROOKS. Mr. Secretary, we appreciate your coming here very much.

Mr. ZUCKERT. Thank you.

Mr. HARDY. And I think perhaps they would like to speak on that, Mr. Chairman.

Mr. BROOKS. Admiral, will you come forward here and represent the Navy?

Do you have a prepared statement, or would you just care to make an observation?

Admiral RUSSELL. I would like to make observations from a statement which I have written and offer the statement for the record.

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(The statement referred to is as follows:)

STATEMENT OF REAR ADM. GEORGE L. RUSSELL REGARDING THE PROPOSED FORMATION OF A LEGAL CORPS IN THE NAVY

The Navy now has an integrated group of 239 professionally trained law specialists. These officers are line officers who have been assigned to special duty only in the field of law pursuant to section 401 of the Officer Personnel Act of 1947, Public Law 381, Eightieth Congress. They are additional numbers in grade and compete only among themselves for promotion and for assignment to authorized billets. They perform sea or shore duty appropriate to their special qualifications as lawyers. They cannot succeed to command at sea, but they can succeed to command ashore if authorized to do so by the Secretary of the Navy. Although these officers are designated for special duty in the field of law, they are still line officers and are able to perform other line duties should the situation demand. This feature of their status is of extreme value in the case of law specialist officers assigned to small fleet units. Although a command may be sufficiently large to warrant the assignment of a law specialist officer, the volume of legal work may reach alternate peaks and depressions. The ability of the law specialist officer to perform line duties makes it possible for the Navy to use his full time to best advantage. He is not compelled to sit idle in the midst of the continuous activity of the ship when his law work is at low ebb, but can be assigned other duties and can pull his weight with the rest of the ship's complement.

Allied with the officers assigned to special duty only in the field of law, there are professionally trained officers-lawyers in two other categories. Twenty-nine lawyers who are also officers in the United States Naval Reserve are now on active duty in law billets; and six general-service line officers of the regular Navy, who have had professional law training, are assigned to primary duty in law. These general-service line officers who have had legal training constitute an important element in the Navy law group. There are at present 47 such officers who have received LL. B. degrees under the supervision of the Judge Advocate General and there are 24 more who are now studying law and who will be available for assignment either to law billets or line billets within the next 2 years. The group of general service line officers with legal training are of great value to the Navy in two ways:

(1) They provide within the law group a leavening of generalized naval experience which is essential in the handling of legal matters closely related to the general administration and operation of the Navy; and

(2) When dispersed in general line billets throughout the fleet and in the shore establishment, they constitute a widespread sources of legally trained personnel available in particular instances arising locally and requiring the attention of a professional lawyer.

There are a number of cogent reasons why the status of the principal group of Navy law officers should not be changed to that of a legal staff corps:

(1) The present system is working very well indeed. Nearly two full years of practical operating experience with the law specialist group has shown the system to be sound in principle, and has revealed no major weakness or practical difficulty. There appear to be no advantages inherent in a staff corps status sufficiently great to warrant the change to a new and untried organization of the Navy law group.

(2) It was at first considered that staff corps status might be necessary to provide adequate protection to the individual who becomes subject to court-martial proceedings. The proposed Uniform Code of Military Justice presently before the Congress, however, would remove any possible necessity for the provision of staff status to Navy law officers. The many safeguards set up by the Uniform Code of Military Justice for the protection of the rights of the individual in military justice matters would be augmented not at all by the reorganization of the law group as a staff corps. No officer in an administrative or command position with relation to the individual subject to court-martial proceedings can take arbitrary action prejudicial to the defendant's interest without subjecting himself to disciplinary action for violation of the law.

(3) Only about 50 percent of the duties of the Judge Advocate General and the Navy law group are concerned with military law. The remaining 50 percent are concerned with a variety of legal matters closely interwoven with the operation and administration of the Navy. These latter duties, in particular, require lawyers with a wide practical knowledge of the Navy and its operation, and with a wide variety of Navy experience. These qualifications can best be supplied by line offi-

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ers who have been professionally trained in law, and who have had some opportunity o participate in the general administration and operation of the Navy. The ormation of a legal staff corps would tend to effect a compartmentation of the Navy's law officers, divorcing them from any participation in the general administration of the Navy and detracting from their value in the handling of legal natters not associated with military law.

(4) Should the Navy law group be reorganized as a staff corps, the performance f law duties, including those concerned with military justice, would necessarily e restricted to members of the legal corps to the exclusion of the legally trained eneral-service line officers. This exclusion would have two serious disadvantages:

(*a*) Replacements would be necessary for those general-service line officers now ssigned to law billets, and the Government's investment in their law training vould in the future be wasted, along with the valuable combination of naval and egal experience which may be found in those officers.

(*b*) Officers of the legal staff corps would have to be made available on ships hroughout the world, whereas previously the distribution throughout the fleet f general-service line officers with law training made it possible to keep the law pecialist officers assigned primarily in central locations. The assignment of egal staff corps officers would frequently be necessary on ships having no space vailable for the quartering of officers whose duties are so highly specialized and igidly confined.

(5) There is no advantage to be gained in organizing the Navy law group as a taff corps from the standpoint of separation of military justice matters from the nfluence of command. The administration of the machinery and procedures ertaining to military justice under the present system is the responsibility of he Judge Advocate General of the Navy. Command exerts no influence over he Judge Advocate General under the present system, as he is responsible only o the civilian head of the Naval Establishment.

(6) Similarly, creation of a corps would have no effect on the supposed possible ressures upon officer-lawyers by command which are misconceived to be exerted hrough the marking of fitness reports. As in the cases of other cures apparently xpected by some to be effected automatically by the corps device, no actual hange would result. If a corps were to be imposed upon Navy lawyers taking hem out of their present status of officers of the line, their fitness reports would till, as a matter of practical necessity, have to be made out by the commanding fficer who had actual contact with the Navy lawyer reported on. This is the resent practice, based upon the entire experience of administration of the Navy, n the case of fitness reports of officers of the Supply Corps, Medical Corps, Dental Corps, and Civil Engineer Corps assigned to their commands. If it were desired to have the Judge Advocate General make out the fitness reports of all Navy lawyers, it would certainly not be necessary to create a corps to make this possible. It could be done just as well under the present form of organization. As a practical matter, however, no officer stationed in a central location could be in a position to make out adequate fitness reports upon hundreds of officers distributed all over the world and its oceans. At best, a central evaluation would be possible only of the paper work done by lawyers in the field. Navy lawyers must perform many other important functions than paper work. They must be qualified to give oral opinions and advice promptly when needed. They must be experts in administration. They must be able to think on their feet, and make forceful oral presentations of their cases, for either defense or prosecution, before courts martial. They must organize their work efficiently. They must be of such caliber that their local reputations and conduct will inspire confidence among enlisted men and officers of their respective commands, in the system of naval justice in action, as distinguished from a mere theoretical system. Only their immediate commanding officers are in a position to make a comprehensive and accurate evaluation of the totality of performance of duties by Navy lawyers. Creation of a corps could in no way change this.

(7) Finally, the formation of a legal staff corps is subject to a broad objection from the standpoint of integration and homogeneity with the rest of the officer personnel of the Navy. The Navy has in the past attempted to meet the problem of specialization among tis officer personnel, specialization having become a necessity in an increasing number of fields, through the assignment of trained and qualified line officers to continuous duty in a particular field of activity. This has been accomplished, without the accompanying rigidity of a staff corps, by means of the designation of officers for special duty in such fields as engineering, communications, law, naval intelligence, photography, public information, psychology, and hydrography. The rentention by such specialists of their status as

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line officers keeps the body of officers personnel as homogeneous as possible under the circumstances, and avoids breaking off from the main group of personnel a large number of small, highly specialized and readily distinguishable subgroups required by law to concern themselves only with their particular phase of the Navy's work. It was on this general principle that the Navy requested and received from the Congress the authority to assign officers to special duty categories as contained in section 401 of the Officer Personnel Act of 1947. To reverse our field at this time and to start making each of these special duty groups into a staff corps would be a definite step backward, would whittle away at the esprit de corps among the officers of the Navy, and would tend to create schisms and rivalries between the segregated specialist groups and the general-service line officers. Also, I consider it only fair to the individual officers concerned, who were professional lawyers and members of the Naval Reserve, to remember that upon their transfer to the regular Navy, in exchange for their giving up their professional careers as lawyers in civil life, they were offered commissions in the line of the Navy. Thus the commissions they accepted were line officer commissions. Many of these officers, especially those who were in substantial actual combat during the war, may feel that action without their consent depriving them of their status as officers of the line of the Navy would constitute a breach of faith. Faced with a substantial requirement of procuring additional lawyers, a difficult problem at best, considering the caliber of attorneys we need and the competition with more immediately remunerative employment available in civil life, it would be unfortunate indeed if through resignations we should lose any of our experienced and proved present group of Navy lawyers.

For these reasons, I believe the reorganization of the Navy law group as a legal staff corps to be neither necessary, justified, nor practically sound.

In short, I consider that the present organization of Navy lawyers as a special-duty-only group of line officers, augmented by general-service line officers with professional law training, has all the advantages of a staff corps without its disadvantages. I believe that the reorganization of this group as a legal staff corps would result in an immediate and pronounced loss in flexibility, efficiency, and esprit.

It is my further conviction that in no event should a shift to a Navy staff corps system be attempted until the Uniform Code of Military Justice has been in operation for several years. Experience under the Uniform Code will provide a hitherto unavailable opportunity to study and compare, under uniform operating conditions, the relative merits of the staff corps system as used in the Army with the special-duty-only system in use by the Navy. At the end of such a trial period, should one or the other of the systems prove vastly superior, consideration could be given to a reorganization having a sound foundation in actual experience.

Admiral RUSSELL. In the first place I would like to say that nobody has any more interest in seeing that justice is done in the Navy than I have. With respect to Mr. Zuckert's observation that we were at one extreme, I would like to say this. As we are now organized, we have something that we think is better than a corps. Before the war our courts martial were tried and men were prosecuted and defended entirely by unrestricted line officers. If an individual was fortunate enough to find one of them that was already a lawyer why so much the better. I think the war proved that that wasn't good enough. So we had the same decision to make 4 years ago that the Air Force has now. We debated at great length whether we should have a corps or some other type of organization. We decided against the corps for a variety of reasons, of which one is the economy of personnel and another is organizational flexibility. We don't call it insulation in the Navy. We call it compartmentation. When you get the lawyers in a corps, we were afraid that they wouldn't be available when you wanted them for other things and that they were likely to get into a rut. As a result we created what we called a law specialist. We now have 241 of them. They are supplemented by about 30 Naval Reserve officers who are retained on active duty, all of whom are lawyers and further by around forty-odd unrestricted

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line officers who are qualified in law. Of that latter number there are only a few that are now working at it, of whom I am one. These law specialists are additional numbers in grade. They compete only among themselves for the promotion and for the assignment to authorized law billets. And they perform sea or shore duty appropriate to their special qualification as lawyers.

I would also like to comment on the thought that if one service has a corps the other ought to have one, too. I think that is a non sequitur because you start out with a different organization. I think the entire history of the Army is one of organization. We used to have the Cavalry and the Infantry and the Coast Artillery. And when aviation came along the most natural thing in the Army was to form an air corps, and they did so. The Navy's organization over the years was entirely different. We had to live together on board ship. You had the line officer, the doctor, the paymaster, the carpenters, and so forth. And to use aviation again, when that came along the most natural thing for the Navy to do was to integrate it. In other words, we start with a different organization. We have integrated our lawyers as line specialists. That is what we have done with them.

We think that it is a good thing to have a few unrestricted line officers working at the law business. They provide the background of service experience which the others do not have yet. I hope they will get it. And I think they will get more service experience if they are given a little more freedom of assignment to duty. For example, we have a law specialist on duty at Guantanamo Bay, Cuba. There isn't enough law business down there to keep that fellow busy all day long every day. So he is a number of other things. I think he acts as intelligence officer, he acts as public relations officer, and he has about four or five other jobs. And the commandant down there finds him very valuable. Now, if he were unavailable for anything but law business he would have time hanging pretty heavy on his hands. Furthermore, I think that in the Navy we are split up into smaller units and we cannot undertake to have a trained lawyer right there with all of them and expect to keep him busy. We have to rotate them around and make them available for larger units.

We found over a period of about 3 years that this system works wonderfully well. I can't see—I have listened to a lot of testimony—where it makes a particle of difference with respect to the fair deal that an individual being tried by courts martial gets, whether we are organized as a corps or whether we are organized the way we are.

Mr. HARDY. You have sort of a hybrid proposition, is that right?

Admiral RUSSELL. Yes. I think maybe we are in the middle, Mr. Hardy. But we like what we have. We find it works very well.

Mr. HARDY. You don't have quite a corps, but at the same time you have a little more coordination of your legal personnel than the Air Forces propose, apparently.

Admiral RUSSELL. We have control of our people, yes. They are also subject to the orders of the district commandants, for example, but it is up to me to shift them around or at least recommend it, and I haven't been turned down yet when I think they need shifting. Does that answer your question?

Mr. BROOKS. You feel, in other words, that you get more efficiency out of your personnel without a corps?

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Admiral RUSSELL. I believe we do.

Mr. BROOKS. We have had no experience with a corps, Mr. Chairman, and we can't say that from our experience, but that is our feeling.

Mr. BROOKS. Admiral, if there are no further questions——

Mr. NORBLAD. May I ask a question?

Mr. BROOKS. Surely.

Mr. NORBLAD. Is there anything to prevent your man at Guantanamo Bay from doing other work, should we set up a corps?

Admiral RUSSELL. Well, he is supposed to devote himself exclusively to law business.

Mr. NORBLAD. Primarily or exclusively?

Admiral RUSSELL. Exclusively, I would expect, if he is in the Corps.

Mr. NORBLAD. Couldn't the law be written to provide that in the event there were not sufficient legal duties for him to perform that he could be assigned to other general work?

Admiral RUSSELL. It could be. I don't say we couldn't function with a corps. We would make it work if we could, Mr. Norblad.

Mr. NORBLAD. I would like to ask you one other question. I was somewhat disturbed because of the fact that there is such a shortage within the Navy of your legal personnel. I refer particularly to the witness who testified at the beginning of the hearing, I don't recall who he was, who said that he had a claim with the Navy of some several millions of dollars. He had gone over there to see the officer in charge with this particular claim and was advised by the officer's secretary that she was very sorry but he was out for the afternoon as he was attending law school. It was a very complex claim. Yet you have very capable men—your predecessor, Admiral Colclough, for instance.

Admiral RUSSELL. Yes.

Mr. NORBLAD. I understand he now has submarine duty.

Admiral RUSSELL. Yes.

Mr. NORBLAD. Yet he is a very capable lawyer.

Admiral RUSSELL. Yes.

Mr. NORBLAD. It seems to me it would be better to allow them to continue doing law work, rather than having so many in law work handling that duty and then going into submarine duty or other fields.

Admiral RUSSELL. A great majority of them do that, Mr. Norblad. There are only a very few that are eligible for command. Only a few unrestricted line officers are doing that. We have only six or seven on duty right now.

Mr. NORBLAD. I just happen to know that particular case.

Admiral RUSSELL. I can't imagine a law student handling a million-dollar claim by himself, either.

Mr. NORBLAD. Do you recall that, Mr. Chairman? Somebody testified on that at the beginning of the hearing. I don't recall what it was. We had so many witnesses.

Mr. BROOKS. Well, I think that follows the line that you have suggested there.

Admiral RUSSELL. I would like to say also—it is awful hard to say in percentages, but the courts-martial work that we do is probably less than 50 percent of our legal business. We have admiralty claims, tax matters, legislation, and administrative law. I consider myself the Attorney for the Secretary. And I might say that the

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but of the four secretaries are lawyers and I had better be right. Incidentally, there is this difference in our organization: There is no command influence being exercised on the Judge Advocate General. I am responsible directly to the Secretary of the Navy.

Mr. BROOKS. Admiral——

Admiral RUSSELL. As Mr. Kenney told you the other day—and off the record——

(Statement off the record.)

Mr. BROOKS. Any further questions? Admiral, if there are not, I promised you an opportunity to be heard again on a question that really we have disposed of but we are always glad to get the benefit of wisdom from you especially. That is article 66.

Admiral RUSSELL. Yes.

Mr. BROOKS. Subsection (e), which the committee struck out the other day.

Admiral RUSSELL. Yes. Well, I appreciate the opportunity to be heard on it because it is a matter of real concern to me. It was on my recommendation that that particular portion that was stricken from the bill was put in there and I did it for this reason: I tried to visualize how I would run that type of organization, if I am to be the head of it. I may not be by the time this goes into effect. I have no quarrel with the idea of passing up to the Court of Military Appeals these questions of law. What worried me was primarily what about the sentence. I just don't like to be held responsible in the view of the American people and in the view of the Congress, and individual Congressmen, for both the law and the sentence, whether it is true or not, and yet not having the say about it. I am going to be in the position, I am afraid, of being, well, very well insulated from the courts-martial work.

Mr. BROOKS. I might say this: In the discussion which occurred when that was stricken out, the feeling was that you would have a great deal to say about sending a case to a certain board. The committee felt at that time certainly that if you sent a case to one board you should be willing to accept the result of the board and not want the authority to send that same case to another board, especially in the light of the fact that you have the authority to certify these cases up to the new court which we are establishing.

Admiral RUSSELL. I can certify them on the law, Mr. Brooks, but not on the sentence. And suppose a case comes to me that is either way. Suppose there is 10 years when I think it ought to be 12 months. There is nothing I can do about it. That has to go through the clemency process and come back afterward. Once in a while we get a case the other way. We had a very bad murder and rape case out in Saipan and we heard on that from everybody, in spite of the fact that the Judge Advocate General as of now has nothing whatever to do with the sentence. There was a great deal of indignation at the lightness of those sentences.

Mr. BROOKS. Now, doesn't the Secretary of the Navy have something to do with the sentence?

Admiral RUSSELL. Yes. He does now.

Mr. BROOKS. Doesn't he listen to your recommendation?

Admiral RUSSELL. I don't make any recommendation on the sentence now, sir. That is what this bill contemplates. If whenever one thinks of the court martial, which seems to me to be the case, they

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immediately think of the Judge Advocate General, then I am afra
I am going to be catching it from all sides and I am going to have
say kind of lamely, "Well, there are three officers in my office who thi
otherwise." As a matter of fact, I have never been able to see wh
shouldn't have the authority to throw out a case. The convenin
authority in the field can do it and three of my subordinates can do
but the Judge Advocate General, as the chief law officer, hasn't an
thing to say about it.

Mr. BROOKS. The Secretary of the Navy has some authority, too
under this?

Admiral RUSSELL. Nor with respect to throwing it out, no s

Mr. BROOKS. What does he have with reference to this bill?

Admiral RUSSELL. He has the authority to extend clemency aft
the case has been processed and it comes back again. And that i
based on the behavior of the individual and whether or not he is a
good risk to be rehabilitated.

Incidentally, there is another point. Take the case of an officer
enlisted man, or whoever he is. He is a borderline case for retention
There is a big argument. Should he be put on probation or shouldn
he. I don't think that that is a proper question for the Judici
Council. I think that ought to be decided by people in uniform
that Service: Do we want this fellow, is he a good risk? Now if
can get enough people in my office on these boards it might work. A
I would probably feel like consulting with, well, say the Commandan
of the Marine Corps or the Chief of Personnel and ask "How do yo
feel about this?" before the decision was made.

Mr. BROOKS. That is just exactly what the committee doesn't lik
I mean, they feel like a man is on trial and you shouldn't dispos
of his case before it is tried there.

Admiral RUSSELL. This is after the trial, sir.

Mr. BROOKS. Oh, after the trial.

Admiral RUSSELL. Yes. This is the question now: What is h
punishment going to be; shall we give him another chance?

Mr. PHILBIN. You should have authority to do that.

Admiral RUSSELL. We have a lot of cases where a man do
something, yes, but upon a close examination you find, well, he mad
a mistake and we don't think he is really dishonest; he is probably
victim of something and maybe is drunk or whatever it is and giv
him another chance and put him on probation. Let him earn h
honorable discharge.

Mr. BROOKS. But what about the case where this first board fin
he is innocent and you certify him back to another board and keep o
until you get a plea of guilty sentence?

Admiral RUSSELL. I have no desire to shop around. What I am
afraid of is the case won't get as good a review as it gets now. W
don't have a very large number of these cases, as I said a minute ago
that involve these legal arguments. My office has been told in s
many words: Now this is a law office. You are entitled to spea
your mind. And invariably, if we have an important case, I don
care who the initial reviewer is, he gets a change to come up to my
office and say what he thinks. We have as many as 8 or 9 officer
review an important case or a close case right now. If we are only
going to have three people doing it and that is going to be final, I am
just afraid of it.

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Mr. BROOKS. Of course, now you have a set-up which is very dmirable, I will say that, but is not under statute and they are urely advisory to you—just like I would hope the Secretary of the avy before he commutes a sentence would get the advice of his est officers on that.

Admiral RUSSELL. Yes.

Mr. BROOKS. But when you write it into the law the committee elt like one hearing should be final, especially when a man is found nocent on appeal, that you shouldn't send him back again to nother board to find him guilty.

Admiral RUSSELL. Well, there are some awful close questions of law, Ir. Chairman. There are honest differences of opinion. If we didn't ave those opinions, I am afraid our lawyers wouldn't do very well.

Mr. DEGRAFFENRIED. But on those questions of law, Admiral, they o to the court of appeals.

Admiral RUSSELL. Yes, if that is close, I probably would, if for o reason than "Now there is a point that ought to be brought out nd promulgated to the three services so they will know what the aw is on this particular point."

Mr. BROOKS. I had this thought; that, in cases where the Judge dvocate General felt that an error had been made by the board hich he created and to which he certified the case, we might amend his to give him authority to certify the case to the Court of Military ppeals on both the law and the evidence.

Admiral RUSSELL. I am afraid they would bog down on that, sir. don't believe they can handle it. We were discussing here not long go their work load. The law questions that, I would think, would e certified up are few enough, but I don't think they could possibly andle all these cases where, for example, the——

Mr. BROOKS. Let me ask you this, then.

Admiral RUSSELL. Yes?

Mr. BROOKS. Do you anticipate that your boards are going to be hat far wrong?

Admiral RUSSELL. I hope not.

Mr. BROOKS. That you can't set up good boards to start with who vill render substantial justice in their decisions?

Admiral RUSSELL. I hope they will.

Mr. DEGRAFFENRIED. You see, Admiral, what we were concerned with was this: You have a board of review here who might say a man s innocent. All right. You don't think their decision is correct, for some reason. You refer it to another board of review and they come out with a different decision from the first board of review. There you have two boards of review, each with equal authority, not one higher than the other. One board has declared him guilty on the facts. And the court of appeals can't review those facts except where they are just insufficient as a matter of law to constitute a conviction.

Admiral RUSSELL. Yes.

Mr. DEGRAFFENRIED. So you have two boards with equal power, one of which has declared him innocent and the other has declared him guilty. Now, he is declared guilty because that one happened to pass on it last and yet the other one has just as much authority. That was the thing we were confronted with.

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Mr. BROOKS. Well, we thank you very much, Admiral. Mr. Smar you have something?

Mr. SMART. I might point out, on this question that you raised minute ago, Mr. Chairman, that the Secretary of the respecti Department would have more or less unlimited powers. Und article 74 of the code, you will notice that under "Remission a suspension", "The Secretary of the Department" and others wh he may designate "may remit or suspend any part or amount of th unexecuted portion of any sentence, including all uncollected fe feitures, other than a sentence approved by the President." In yo initial consideration of this matter, I think that when you delet article 66 (c) you concluded that if there had been a grievous mista made in the severity of the sentence it was then within the prerogati of the Judge Advocate to recommend to the Secretary that it b appropriately reduced when it came to him. I would say und article 74 he had that authority. Last year, when we considered 257 you will recall that we came to a matter of clemency power and th committee vested it in the Judge Advocate General. You will furth recall that, when the matter was brought before the full committ General Eisenhower and then Secretary of War Patterson came u and for cogent reasons the committee changed that and revested th same authority back in the Secretary to the exclusion of the Jud Advocate. You have perpetuated that same situation here.

Mr. BROOKS. Yes, this is the law that we are presently using.

Mr. SMART. It carries forward the same theory that you adopt previously.

Mr. HARDY. Well, when you give it to the Secretary, you anticipa that a good bit of the decision will hinge on the Judge Advocate Ge eral; isn't that right?

Mr. SMART. I should think so. I certainly think he has the great of confidence in his Judge Advocate General and would certainly abi by his recommendation.

Col. DINSMORE. Mr. Chairman, I would like to point out——

Mr. BROOKS. All right, Colonel.

Colonel DINSMORE. That the Elston bill did not divest the Jud Advocate General of authority in those matters but made his acti subject to supervision by the Secretary.

Mr. SMART. Well, as to clemency, you will recall, we revested clem ency in the Secretary, to the exclusion of the Judge Advocate Gener

Admiral RUSSELL. My action is subject to the supervision of t Secretary of the Navy right now, but I won't have any action to tak under this.

Mr. BROOKS. You will have the action if you are dissatisfied—

You will have this action: First you set up your boards of revi which is lots of authority, in my judgement, in the handling of a ca Then you will have the right to remove that board if it is not functio ing properly. Then, in addition to that, it seems to me you hav the authority of selecting the board you want the case to go to.

Admiral RUSSELL. Yes.

Mr. BROOKS. Then finally, if the board doesn't give you a satis factory decision, I mean in your judgment, for the good of the servi you have the authority to certify that case up to the Court of Milita Appeals for a decision. And, furthermore, you have the authori

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o present your views to the Secretary of the service. All of which, t seems to me, gives you four or five opportunities, for the good of the ervice, to really affect that case. Now I just mention that. Of ourse, we are happy to hear from the admiral and have his views. would be glad at the next meeting of the committee to present the natter again for whatever hearing they want to give.

Mr. SMART. I am wondering if this would answer Admiral Russell's riticism: If we would perpetuate the same authority which the Judge dvocate General of the Army has today under Article of War 53, believe it is, which gives him certain powers to remit and to suspend entence, in the respective Judge Advocates General but still not ermit the Judge Advocate General to refer it to another board of eview——

Mr. BROOKS. I think that is what the committee is objecting to— ot your authority to remit or suspend but the closing of a case which ad a hearing.

Admiral RUSSELL. I am just interested in seeing that we are not andcuffed with a system here which I am afraid might result in a oorer review than it now gets. And this business was prompted ecause I thought to myself: "Well now, what is going to happen to his sentence, who is going to have the say-so on that?"

Mr. BROOKS. Mr. Smart, could you draft some language between ow and the next session, tomorrow, which would give the authority o the Judge Advocate General to remit and suspend in certain cases?

Mr. PHILBIN. To throw out a case if he doesn't think that the case s sustained?

Mr. BROOKS. Is that what you have in mind, Admiral?

Admiral RUSSELL. Yes; that is more like it, sir.

Mr. BROOKS. Fine. If there is no objection, then, that suggestion ill be adopted.

There is a full committee meeting tomorrow?

Mr. SMART. Mr. Vinson told me there was a full committee meeting omorrow.

Mr. BROOKS. This will conclude the public hearings and without bjection we will meet in executive session on Wednesday, April 6, nd try to finish the bill.

(Whereupon, the hearing was adjourned at 12:12 p. m.)

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MAY 13

[No. 38]

FULL COMMITTEE HEARINGS ON H. R. 1741 AND S. 796

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Tuesday, April 12, 1949.

The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. Let the committee come to order. See if we have a quorum.

Mr. HARPER. Yes, sir.

The CHAIRMAN. Now, members of the committee, the first thing I desire to take up are the Senate amendments which were made to the bill reported by Mr. Brooks' subcommittee and announced in the Congressional Record this morning. I have examined it and from my viewpoint, I think the committee can accept them without going into conference.

I would like to hear what Mr. Brooks has to say about them and what Mr. Brown of the professional staff has to say about them and what Mr. Brooks' subcommittee thinks about them.

Mr. BROOKS. Mr. Chairman, I went over it with Mr. Brown this morning. He is wholly familiar with the amendments. The second amendment is purely a rewrite of a couple of clerical mistakes which were made. It is substantially the same guided missile bill.

Mr. Brown, did you check further on that?

Mr. BROWN. Yes, sir. The first amendment was on page 2, line 6, after the word "amended," to strike out the comma and the words "in administering the provisions of the act of July 9, 1942 (56 Stat. 654, 43 U. S. C., Supp. 315q)." and insert:

> Prior to the acquisition under the authority of this section of any lands or rights or other interests pertaining thereto, the Secretary of the Air Force shall come into agreement with the Armed Services Committees of the Senate and the House of Representatives with respect to the acquisition of such lands, rights, or other interests.

That is the first amendment.

Mr. BROOKS. Nobody objected to that amendment. What is the second one? I wish you would explain that to the committee.

Mr. BROWN. The next amendment was on page 2, after line 17, to strike out section 4 and section 5. Section 4 reads:

> The Secretaries of the Army, the Navy, and the Air Force are hereby authorized to contribute to the support of the joint long-range proving ground for guided missiles and other weapons to the extent they may deem necessary or advisable, including, but not limited to, the allocation for such support of funds available to them for such purposes.

The language in the new section—I won't read the entire new section at this point, but I will read the language that parallels that which I just read:

> The Secretary of Defense is further authorized to permit, to the extent that he may deem appropriate, the Secretaries of the Army, the Navy, and the Air Force

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to contribute, with or without reimbursement, to the establishment and ... of the joint long-range proving ground for guided missiles by the loan, assig... or transfer of personnel, supplies, equipment, and services.

Mr. BROOKS. How does that change the situation?

Mr. BROWN. I understand, Mr. Chairman, that the effect of ... language is to strike out the authority of the services to contri... funds. They may, however, contribute support in the form of ... sonnel, supplies, and equipment. I believe the thinking back of ... was to prevent a situation where you would have the Air Force as ... responsible service coming in and getting an appropriation, say ... $15,000,000 or some other specific figure, for the operation of the ra... and at the same time have the other services allocating addit... funds which would not be readily identifiable as being chargeab... the operation of a guided-missiles range.

I understand that was the thinking back of the change in languag... so that the Congress could tie down the actual appropriations for ... purpose.

Mr. BROOKS. In other words, to avoid duplications for that pro...

Mr. BROWN. Yes.

Mr. BROOKS. Are those the only differences?

Mr. BROWN. That is not all. I would like to read the rest of ... new section, that is, the portion which replaces the old section 5, w... originally read as follows:

> The Secretary of Defense may, at his discretion, transfer and reallocate t... Secretary of the Army, the Secretary of the Navy, or the Secretary of th... Force all, or any part of the authority granted herein, and, in connection wit... transfer or reallocation, may transfer all or any part of the funds available fo... establishment or support of the joint long-range proving ground for guided mi... and other weapons.

Now, the first part of the new section 4 takes the place of the section 5. I will read the first part of it:

> SEC. 4. The Secretary of Defense is authorized, in his discretion, to tra... the Secretary of the Army or the Secretary of the Navy, and to retransfer ... either of such Secretaries to the other or to the Secretary of the Air Force, ... any part of, the authority granted by sections 1 and 2 of this act; and, in co... tion with any such transfer or retransfer, to transfer all or any part of the ... available for the establishment and support of the joint long-range proving g... for guided missiles and other weapons.

And then the section continues with the change I read previously

The CHAIRMAN. Are there any suggestions?

Mr. KILDAY. Yes.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. Mr. Chairman, I was not on the subcommittee th... worked on this bill, and I would accept the subcommittee's vie... but I happened to be here when this portion was discussed before ... subcommittee, and I think this is a very material change and d... not limit the authority of the departments but vastly expands th... authority.

We have had the issue several times of the transfer of prop... without reimbursement, and we had it particularly in the Surp... Property Disposal Act, where the position was taken, if supplies a... equipment can be transferred without reimbursement, Congress lo... control over the appropriations made for any specific purpose beca... the department can go ahead with the material it has and trans... it to another department and thereby increase for all practical pu... poses the appropriations of the receiving department.

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The language previously existing permitted only the transfer of nds available for the program for a long-range proving ground for ided missiles. Such funds could only be available by appropriation, that the Congress would have specifically appropriated funds for is purpose and these could then be transferred within the cooperating rvices.

But, with the amendments, they will be able to transfer property any extent they see fit without the authority of Congress.

Mr. BROOKS. Mr. Brown, is it true that the Senate amendment ally limits the House amendment rather than extends it?

Mr. BROWN. I would say to a certain extent that is true; yes; Mr. rooks.

The CHAIRMAN. Then I tell you we better plan to send the bill for conference, and I suggest to the chairman of the subcommittee that ie first three members on the majority side and the first two members 1 the minority side be requested by the Speaker to serve as con-rees and to disagree to all Senate amendments and ask for a con-rence in which to debate that.

Now, members of the committee, here is a bill that passed the enate yesterday that I think we can afford to dispose of. It is a ill which would permit General Arnold, who is already retired as a eneral of the Army, to retire as a general of the Air Force.

Read this bill and see if there are any objections to it. It applies nly to General Arnold, and I understand he has retired as a general f the Army and he wants to retire as a general of the Air Force.

Mr. ARENDS. It is to bring the Air Force into conformity with the ther services.

The CHAIRMAN. Read the bill.

Mr. HARPER (reading):

A BILL (S. 706) To establish the grade of general of the Air Force, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of merica in Congress assembled, That there is hereby established in the United States ir Force the grade of general of the Air Force.

SEC. 2. The grade of any individual transferred in the grade of general of the rmy from the Regular Army to the United States Air Force, pursuant to the ational Security Act of 1947 (act of July 26, 1947; 61 Stat. 695), is herewith edesignated "general of the Air Force."

SEC. 3. Nothing herein shall be construed as appointing any individual to a ew or different office or to alter or prejudice the status of any individual con-erned so as to deprive him of any pay or allowances, rights, benefits, or privileges o which he may be entitled under existing law.

The CHAIRMAN. Any objection on this bill?

Mr. COLE. As I understand it, it creates a new rank in the Air Force and does not apply to this particular individual, General Arnold, who I feel is entitled to every consideration possible. But so far as permanently creating a new rank in the Air Force, I think we ought to——

The CHAIRMAN. It says this:

Nothing herein shall be construed as appointing any individual to a new or different office or to alter or prejudice the status of any individual concerned so as to deprive him of any pay or allowances, rights, benefits, or privileges to which he may be entitled under existing law.

He is the only one it applies to, because he is the only one.

Mr. COLE. That is not the way I interpret this last one. It says this will not apply to any new individual if it affects adversely his

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pay, and so forth, but it permanently creates the new rank of general of the Air Force.

Mr. SHORT. Why shouldn't we have a general of the Air Force?

Mr. KILDAY. Except we don't have them in any of the other services.

Mr. HARPER. Public Law 482, Seventy-eighth Congress, 58 Stat. 802, established the military grades of fleet admiral of the United States Navy and general of the Army, and this will create a general of the Air Force comparable to the fleet admiral in the Navy and general of the Army.

The CHAIRMAN. I say they are separate now, and I see no reason why we should not go ahead and do it. Any objection to the bill? If not, the bill will be favorably reported. I will ask Mr. Arends to report it to the Members of the House.

That is taken care of.

Now, members of the committee, I think we have reached the point where we should have another special committee, and I consider this one of the most important special committees that I will ask to be designated for some time, and it is a special committee that is hereby established within the House Committee on Armed Services to conduct an inquiry on post exchanges, quartermasters sales stores, ship's service stores, commissaries, and other pertinent or related activities within the armed forces.

The jurisdiction of the subcommittee shall be to inquire fully into the operation of the afore-mentioned facilities within the armed forces and shall determine the extent to which these facilities are necessary; to what extent, if any, the system is being abused by either service or civilian personnel; the authority under which the systems operate; and any and all other matters pertinent to an inquiry of this nature.

The subcommittee shall commence its inquiry on the date determined by the chairman thereof and upon completion of its inquiry shall report its findings and recommendations to the House Committee on Armed Services, at which time said subcommittee shall cease to exist.

Here is what happens. This is one of the large businesses of the country, which did a total business of $635,211,471.68 in the calendar year of 1948. In the United States post exchanges they did a business last year of $152,171,862.83. The quartermaster sales stores business amounted to $53,112,780.00.

Now, overseas they did a gross business at the post exchanges of $240,674,247.51, and at the quartermaster sales stores overseas they did $70,560,000 worth of business. Of course, I doubt if we should find any fault with these organizations overseas.

Now, in the Navy, the ship service stores did $88,264,200.49 worth of business in 1948, and the Navy commissaries did $27,089,959.75 worth of business.

The Marine Corps did $3,338,421.07.

Now, here is a business of over $635,000,000 being carried on by the armed services last year. I think we should have a subcommittee look into this matter to learn something about it and determine how it is being operated and to determine whether or not it should be curtailed. So I think we ought to have a subcommittee; and, if it meets with the approval of the committee, I would like to appoint

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Mr. Philip J. Philbin as chairman, Mr. James J. Heffernan, Mr. F. Edward Hébert, Mr. Arthur Winstead, Mr. Franck R. Havenner, Mr. W. Sterling Cole, Mr. Charles H. Elston, Mr. Jack Z. Anderson, and Mr. Leroy Johnson.

Mr. Robert W. Smart, of the professional staff, is detailed to assist the chairman and members of the subcommittee in making this investigation.

This is one of the most important things this committee can do.

Is there any objection to the adoption of the resolution to appoint a subcommittee to make this investigation into post exchanges, ship service stores, quartermaster sales stores, and commissaries?

Mr. COLE. May I ask, Mr. Chairman, if there is any particular occasion which prompted this inquiry?

The CHAIRMAN. Well, I have been receiving a great many letters, and Mr. Andrews had some inquiry last year about it. I introduced a bill to require the Federal excise tax on luxuries that have been sold in these exchanges. The Small Business Committee of the House wrote me a letter and said that something along this line should be looked into, and if we didn't look into it they would take jurisdiction and probably look into it themselves, so that is what brought it on, or prompted it.

Mr. SHORT. Particularly items like watches, furs; and they even sell Frigidaires.

The CHAIRMAN. If there is no objection, the committee is authorized, and the gentlemen I named and Mr. Smart will go ahead with this inquiry.

Now, that disposes of everything we have before the full committee this morning. The policy committee will meet this afternoon at 2 o'clock, and I will ask that Mr. Brooks' subcommittee meet with the policy committee.

Mr. DURHAM. Mr. Chairman.

The CHAIRMAN. Mr. Durham.

Mr. DURHAM. There is probably someone here to testify on the so-called wind-tunnel bill, H. R. 3434. If there is, that meeting is called off, because it is necessary to meet on the floor or the House at 11 o'clock.

Mr. HÉBERT. Mr. Chairman, we have that matter of the subcommittee on clothing, the approval of that letter.

The CHAIRMAN. That is approved by your subcommittee, and you have written the Department about it.

Mr. HÉBERT. It is not necessary to have the full committee approval on it?

The CHAIRMAN. No, sir; just what you have done is all that is necessary. You have written.

Mr. SHORT. Mr. Chairman, I would like to offer one suggestion before we adjourn. I trust that all members of this committee will be on the floor today—constantly on the floor. I hope we can do something to help the naval air arm today. They cut the heart out of it.

The CHAIRMAN. They certainly did.

Mr. SHORT. And I think we ought to be there and put on a fight over there. The country needs to be advised about it.

The CHAIRMAN. They cut the naval aviation where by 1955 they will only have a naval air force of 4,000 active planes.

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Mr. SHORT. Utterly ridiculous and most dangerous.

The CHAIRMAN. Utterly unfair. The question runs through my mind—well, I will talk to you about that later. Now, if there is nothing further, Mr. Kilday will take charge of this subcommittee and the full committee is adjourned.

(Whereupon, at 10:30 a. m. the committee adjourned.)

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[No. 39]

TO AUTHORIZE THE SECRETARY OF THE ARMY TO PROCEED WITH CONSTRUCTION AT STATIONS OF THE ALASKA COMMUNICATION SYSTEM (H. R. 4315). MR. BARTLETT

THE SECRETARY OF DEFENSE,
Washington, April 8, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Enclosed is a letter addressed to you by the Secretary of the Army recommending the enactment of a proposed draft of legislation, also enclosed, bearing the title "To authorize the Secretary of the Army to proceed with construction at stations of the Alaska communication system."

This legislation has been approved for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Army.

Sincerely yours,

LOUIS JOHNSON.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is enclosed herewith draft of a bill to authorize the Secretary of the Army to proceed with construction at stations of the Alaska communication system, which the Department of the Army recommends be enacted into law. The Secretary of Defense has assigned the responsibility for the preparation and submission of this measure, on behalf of the National Military Establishment, to this Department.

The purpose of the proposed legislation is to authorize the Secretary of the Army to proceed with further construction at named stations of the Alaska communication system in Alaska, and in Seattle, Wash., and to acquire land and rights pertaining thereto, or other interest therein by donation, purchase, exchange, or otherwise. The proposed legislation also authorizes appropriations to continue available until expended, and provides for the execution of continuing contracts to cover authorized construction when existing appropriations are not sufficient to cover the entire cost.

Public Law 626 (80th Cong., 2d sess.) authorizes construction for the initial phases of the program. The construction provided for is part of a program which has been inaugurated to keep pace with the development of Alaska and the growing communications needs of the civilian population and other Government agencies in the Territory.

The enactment of this enabling legislation will not involve the appropriation of funds. It contemplates a construction program the full implementation of which, however, it is estimated will cost $7,668,212.

This report has been coordinated among the departments and boards in the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has been consulted and advises that there is no objection to the submission of this proposed legislation for the consideration of the Congress.

Sincerely yours,

KENNETH C. ROYALL,
Secretary of the Army.

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MAY 21 49

[No. 40]

AUTHORIZING THE SECRETARY OF THE NAVY TO CONSTRUCT AND THE PRESIDENT OF THE UNITED STATES TO PRESENT TO THE PEOPLE OF ST. LAWRENCE, NEWFOUNDLAND, ON BEHALF OF THE PEOPLE OF THE UNITED STATES, A HOSPITAL OR DISPENSARY FOR HEROIC SERVICES TO THE OFFICERS AND MEN OF THE UNITED STATES NAVY (H. J. RES. 230). MR. JOHNSON OF CALIFORNIA

THE SECRETARY OF THE NAVY,
Washington, April 5, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed joint resolution authorizing the Secretary of the Navy to construct and the President of the United States to present to the people of St. Lawrence, Newfoundland, on behalf of the people of the United States, a hospital or dispensary for heroic services to the officers and men of the United States Navy.

The purpose of the proposed legislation is to authorize the construction of a memorial hospital or dispensary in expression of the appreciation and gratitude of the people of the United States of America, and of the United States Navy in particular, for the heroic and brave action of the people of the town of St. Lawrence, Newfoundland, in saving the lives of many of the officers and men of the U. S. S. *Pollux* and the U. S. S. *Truxton*, stranded near there in 1942. The joint resolution would permit the President of the United States to present the memorial to the people of St. Lawrence, Newfoundland.

At the time of the loss of these ships on the rough and dangerous coast of Newfoundland, the villagers of St. Lawrence performed heroic services. It appears that without the prompt, efficient, and tireless effort of these people and their self-sacrificing labor, only a handful of our men would have been saved. Furthermore, of the number rescued, few would have recovered from the effects of immersion and cold had it not been for the generous manner in which these people gave assistance. They took off parts of their own clothing in order to clothe our men and in addition brought from their houses all the articles of clothing they could gather; they helped in many other ways. In the vicinity of the grounding of the U. S. S. *Pollux* and U. S. S. *Truxton* is an isolated series of small communities connected by a single road. The people are a hardy race of English and Irish descent, very hard to know and very sensitive. Almost without exception they are poor and with few possessions. Nevertheless, they ungrudgingly shared their belongings with the unfortunate victims of the wrecked vessels.

A joint resolution, favored by the late President Roosevelt, was submitted to both the Seventy-seventh and Seventy-eighth Congresses

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in 1942 and 1943. However, because of the more important bus
directly connected with the war effort the resolutions were n
passed. Since there is no hospital in the St. Lawrence area
erection of a small equipped hospital or dispensary would const
a fitting tribute to the courage and generosity of these people
serve as a living memorial to the officers and men of the U. S.
Pollux and U. S. S. *Truxton*.

The proposed memorial was widely publicized during 1943 b
in the United States and Newfoundland and the people of St. L
rence (definitely in need of a hospital), were highly enthusiasti
the prospect of a hospital being donated by the Government of
United States. It would seem to be appropriate that this need
recognized.

In view of the foregoing, the Navy Department recomme
enactment of the proposed legislation.

The cost involved in the proposed legislation would not ex
$375,000.

This report has been coordinated within the National Milita
Establishment in accordance with procedures prescribed by t
Secretary of Defense.

An identical report has been transmitted to the Speaker of t
House of Representatives this date.

The Navy Department has been advised by the Bureau of t
Budget that there is no objection to the submission of this repor
the Congress.

Sincerely yours,

JOHN L. SULLIVAN.

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[No. 41]

O AUTHORIZE CERTAIN PERSONNEL AND FORMER PERSONNEL OF THE DEPARTMENT OF THE ARMY TO ACCEPT CERTAIN GIFTS AND FOREIGN DECORATIONS TENDERED BY FOREIGN GOVERNMENTS (H. R. 4383). MR. BROOKS

DEPARTMENT OF THE ARMY,
Washington, April 14, 1949.

on. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a roposed bill to authorize certain personnel and former personnel of ie Department of the Army to accept certain gifts and foreign ecorations tendered by foreign governments.

The purpose of the proposed legislation is as stated in the title.

The acceptance of gifts from foreign states by persons who hold an fice of trust or profit under the United States is controlled by article section 9, clause 8, of the Federal Constitution which reads as llows:

> No Title of Nobility shall be granted by the United States: and no Person lding any Office of Profit or Trust under them, shall, without the Consent of ie Congress, accept of any present, Emolument, Office, or Title, of any kind hatever, from any King, Prince, or foreign state.

The Department of the Army has interpreted this clause as applying) persons in all components of the Army, including active, inactive, or etired individuals.

The act of July 20, 1942 (56 Stat. 662), as amended by Public Law 8, Eightieth Congress, and by Public Law 314, Eightieth Congress, uthorized the acceptance of decorations, orders, medals, and emblems y personnel of the armed forces tendered by cobelligerent or neutral ations, or the other American Republics during World War II and for period of 1 year thereafter. Public Law 239, Eightieth Congress, erminated the act of July 20, 1942, thereby ending the authority for ceptance of foreign decorations as of July 24, 1948.

At the present time, certain awards in the form of decorations from oreign nations to present and former members of the Army are being eld in the custody of the Department of State pending congressional pproval for their acceptance. A list of these awards is enclosed.

In order that those individuals for whom gifts and decorations were ntended may accept them, the Department of the Army recommends he enactment of the proposed bill.

If enacted into law, this proposed legislation would result in no ncreased cost to the Government.

The Bureau of the Budget has been consulted and advises that there s no objection to the submission of this proposed legislation for the onsideration of the Congress.

Sincerely yours,

KENNETH C. ROYALL,
Secretary of the Army.

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List of awards from foreign nations being held in custody of the State Depart

Country presenting	Name of award	Na
Argentina	Order of San Martin	
Italy	Cross of War Merit	
China	Financial Medal	
San Marino	Equestrian Order of Saint Agata	
Italy	Military Order of Italy	
Hungary	Order of Merite Hongoris	
Roumania	Order of the Cross of Roumania	
Italy	Order of the Cross of Italy	
Finland	White Rose of Finland	
Greece	Grecian Military Cross	
Estonia	Decoration of the Eagle	
Latvia	Order of the Three Stars	
Finland	Order of the Lion of Finland	
Italy	Order of the Star of Italian Solidarity	
Rumania	Commemorative Medal of Carol I	
Iran	Homoyun	
Philippines	Legion of Honor	
Peru	Peruvian Order Militar de Ayacucho	
Guatemala	Merito Militar	
Mexico	Military Merit	
Czechoslovakia	Order of the White Lion	
Venezuela	Order of Francisco de Miranda	
Belgium	Order of Leopold II	
Norway	Medal of Merit	
Italy	Order of Saints Maurice and Lazarus	
Philippines	Gold Cross Medal	
Venezuela	Watches	
Brazil	Order of Military Merit, degree of grande oficier da Ordem do Merito Militar Quadro Especial.	
Do	Order of Military Merit, degree of grand officer	
Do	Order of Military Merit, degree of commander	
Do	Order of Military Merit, degree of officer	
Do	Order of Military Merit, degree of cavalier (knight)	

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[No. 42]

TO PROVIDE FOR THE APPOINTMENT OF FEMALE DOCTORS AND SPECIALISTS IN THE MEDICAL DEPARTMENT OF THE ARMY, AND FOR OTHER PURPOSES (H. R. 4384). MR. CLEMENTE

THE SECRETARY OF DEFENSE,
Washington, April 21, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: Attached is a letter addressed to you by the Secretary of the Army recommending the enactment of a proposed draft of legislation, also attached, bearing the title, "To provide for the appointment of female doctors and specialists in the Medical Department of the Army, and for other purposes."

This legislation has been approved for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Army.

With kindest personal regards, I am,

Sincerely yours,

LOUIS JOHNSON.

DEPARTMENT OF THE ARMY,
Washington, D. C., April 14, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is inclosed herewith draft of a bill to provide for the appointment of female doctors and specialists in the Medical Department of the Army, and for other purposes, which the Department of the Army recommends be enacted into law. The Secretary of Defense has assigned responsibility for the preparation and submission of this measure, on behalf of the National Military Establishment, to this Department.

The purpose of this proposed legislation is to provide for the maximum utilization of this Nation's resources in these professional fields, so as to assure essential adequate medical and dental care to members of the Department of the Army and Department of the Air Force.

The shortage of physicians, dentists, and veterinarians within the Department of the Army needs no further elaboration. There is also an acute shortage of specialists in sciences allied to medicine. There has been a keen interest in volunteer programs, designed to procure personnel in these fields, maifested by female specialists who are not commissionable under current statutes. In view of their interest and the critical shortage of personnel in their specialties, it is felt that they should be provided with an opportunity to contribute to this Nation's defense in a status commensurate with their professional qualifications.

During the recent war, female personnel in the armed forces established an outstanding record in all the fields in which they participated. This was not untrue of those who served as professional officers in the Army Medical Department. This record has been recognized by the establishment of Regular and Reserve components for female personnel in all the armed forces. The Department of the Navy is currently authorized to commission these specialists, and it is strongly urged that the Department of the Army be permitted to do likewise.

The fiscal effect of the proposed legislation depends on the number and grades of those appointed in the Regular Army and the number and grades of those appointed in the Reserve Corps who may be ordered to active duty. The number

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and grades of those so appointed and those so ordered to active duty will be within the authorized strength of the armed forces. They will be paid the same pay and allowances as are authorized for male officers of like grade and length of service and those eligible under the provisions of the Army-Navy-Public Health Service Medical Officer Procurement Act of 1947 (Public Law 365, 80th Cong.) will receive the additional compensation provided therein.

This proposed legislation and report thereon has been coordinated among the departments and boards in the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has been consulted and advises that there is no objection to the submission of this proposed legislation for the consideration of the Congress.

Sincerely yours,

KENNETH C. ROYALL,
Secretary of the Army.

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[No. 43]

TO AMEND SECTION 1452, REVISED STATUTES, RELATING TO PRESIDENTIAL ACTION ON THE PROCEEDINGS AND DECISIONS OF NAVY RETIRING BOARDS (H. R. 4388). MR. COLE OF NEW YORK

THE SECRETARY OF DEFENSE,
Washington, April 15, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Navy recommending the enactment of a proposed draft of legislation, also attached, bearing the title, "To amend Section 1452, Revised Statutes, relating to Presidential action on the proceedings and decisions of Navy retiring boards."

This legislation has been approved for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Navy.

With kindest personal regards, I am,

Sincerely yours,

LOUIS JOHNSON.

THE SECRETARY OF THE NAVY,
Washington, April 5, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives, Washington 25, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of proposed legislation to amend section 1452, Revised Statutes, relating to Presidential action on the proceedings and decisions of Navy retiring boards.

The purpose of the proposed bill is to amend section 1452, Revised Statutes, so as to authorize the Secretary of the Navy to approve or disapprove the proceedings and decisions of Navy retiring boards. Under the existing provision of that section, the Secretary of the Navy is required to lay the proceedings and decisions of such boards before the President for his approval or disapproval.

The act of June 17, 1948 (Public Law 668, 80th Cong.), amended various provisions of law so as to delegate the authority contained therein from the President to the Secretary of the Navy, and thereby relieve the President of some of his many administrative burdens. Two provisions which were so amended relate to the retirement of officers for an incapacity resulting from an incident of the service, and the retirement of officers for an incapacity not resulting from an incident of the service, which are found in the Revised Statutes, sections 1453 and 1454, respectively. These sections, as amended by the act of June 17, 1948, contain the phrase "if said decision [of a Navy retiring board] is approved by the Secretary of the Navy." Section 1452, Revised Statutes, which was not amended by the act of June 17, 1948, requires the Secretary of the Navy to present the proceedings and decisions of Navy retiring boards to the President for his approval or disapproval. Thus, the omission of section 1452 of the Revised Statutes from the act of June 17, 1948, renders ineffective the amendments made by that act to sections 1453 and 1454 of the Revised Statutes. Enactment of the proposed bill would remove the anomalous situation which exists with respect to these sections of the Revised Statutes.

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The Navy Department has been designated by the Office of the Secretary of Defense to sponsor this measure on behalf of the National Military Establishment and accordingly recommends its enactment.

Enactment of the proposed bill would not result in any cost to the Government.

This report has been coordinated within the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

DAN A. KIMBALL, *Acting.*

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[No. 44]

FULL COMMITTEE HEARINGS ON H. R. 3341 AND H. R. 4080

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Wednesday, April 27, 1949.

The committee met at 10 a. m., Hon. Carl Vinson (chairman) presiding.

The CHAIRMAN. Let the committee come to order.

REFERENCE OF VARIOUS BILLS

Members of the committee, the Department has sent up four bills, and I desire to have various members of the committee introduce these bills, if they will do so.

The first bill is to authorize the Secretary of the Navy to construct and the President of the United States to present to the people of St. Lawrence, Newfoundland, on behalf of the people of the United States, a hospital or dispensary for their heroic services to officers and men of the United States Navy.

Mr. Johnson of California, have you any objection to the bill being dropped in the hopper under your name?

Mr. JOHNSON. No; I haven't.

The CHAIRMAN. All right, drop that in. And let it be referred to Mr. Kilday's subcommittee.

Now, the next bill is to authorize certain personnel and former personnel of the Department of the Army to accept certain gifts and foreign decorations tendered by foreign governments.

Mr. Brooks, have you any objection to introducing this bill?

Mr. BROOKS. No; I will be glad to introduce it.

The CHAIRMAN. Let Mr. Brooks introduce that bill, and it will be referred to Mr. Brooks' subcommittee.

The next bill is to provide for the appointment of female doctors and specialists in the Medical Department of the Army, and for other purposes.

Mr. Clemente, have you any objection to introducing that bill?

Mr. CLEMENTE. No, sir.

The CHAIRMAN. All right, let Mr. Clemente introduce that. And that will be referred to Mr. Durham's subcommittee.

Now, the next bill is to amend section 1452 of the revised code relating to the Presidential acceptance on proceedings and decisions of the Navy Retirement Board.

Mr. Cole, have you any objection to introducing that bill?

Mr. COLE. No.

The CHAIRMAN. Let it be introduced by Mr. Cole, and it will be referred to Mr. Kilday's subcommittee.

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MARINE BAND TO FIFTY-NINTH CONFEDERATE VETERANS REUNION AT LITTLE ROCK, ARK.

The CHAIRMAN. Members of the Committee, there is a bill introduced by Mr. Hays, of Arkansas, providing that the Marine Band go to the Fifty-ninth Confederate Veterans Reunion to be held in Little Rock, Ark., September 27. I understand this is the last reunion like the Grand Army of the Republic, and it has always been the policy that the band attend both of these annual gatherings.

If there is no objection on the part of the committee, notwithstanding the fact that we are short one or two members to constitute a quorum, I will ask the committee to act favorably on it.

Any objection?

If not, it is so ordered.

Anybody from Arkansas on the committee?

(No response.)

The CHAIRMAN. I will ask Mr. Hebert to report the bill.

Off the record.

(Discussion off the record.)

H. R. 4080

The CHAIRMAN. Now, Mr. Brooks, of Subcommittee 1, I understand that you and your subcommittee, after many weeks of hearings, have finished your consideration of H. R. 4080. The committee will be glad for you to make your statement for its consideration.

Mr. BROOKS. Mr. Chairman and gentlemen of the committee, I would like to say before beginning the prepared statement, that much to my surprise and pleasure the attendance in the course of these long committee hearings was excellent. The harder we worked, I believe, the better the attendance became, which thought I commend to the other subcommittees. They worked very diligently and I certainly think that every member of the subcommittee is entitled to great credit and recognition for the individual and outstanding work of each one of them.

In addition to that, Mr. Chairman, I want to say that Mr. Bob Smart, who was assigned for this particular bill, has done a truly outstanding job. There is no question about it, Mr. Smart is the best-versed man I know of on the bill at the present time. He worked, under your assignment, with the Department long before the bill was created. And then he worked with us. So I don't know of any man who has put in longer hours and harder hours, and was more interested and better versed with the contents of this bill. I tell you it is a pleasure, as the chairman of the subcommittee, to know that we have the backing of him.

Mr. Felix Larkin, special assistant general counsel, also worked most diligently; and representatives of the services helped us all the way through. For all of that we are most grateful.

Now, Mr. Chairman, I have a report. We tried to condense it and get it a little shorter than it is. It runs about 15 pages. If the committee will bear with me, I would like to read the report, following which questions would be in order, if that is all right with the chairman.

The CHAIRMAN. All right; go ahead.

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Mr. BROOKS. Mr. Chairman, before offering an explanation of the provisions of H. R. 4080, I would like for the committee to fully understand the comprehensive efforts which have preceded it. In July of 1948, Secretary of Defense Forrestal appointed a special committee to draft a uniform code of military justice, uniform in substance and uniform in interpretation and construction, to be equally applicable to all of the armed forces. Prof. Edmund Morgan, Jr., of the Harvard Law School, was designated chairman, the remainder of the committee being Assistant Secretary of the Army Gordon Gray, Under Secretary of the Navy John Kenney, and Assistant Secretary of the Air Force Eugene Zukert. Supplementing the efforts of the main committee was a working group of approximately 15 persons, including officer representatives of each of the services and five civilian lawyers with service experience, under the chairmanship of Mr. Felix Larkin, assistant general counsel in the Office of the Secretary of Defense. The efforts of such groups usually pass without notice or acclaim but I want to say for the record that we are fully aware of their endeavors and herewith pay tribute to their accomplishments.

During the 7-month study which was conducted, the Morgan committee and the working group considered the Revised Articles of War, the Articles for the Government of the Navy, the Federal Code, the penal codes of various States, and voluminous reports on military and naval justice which have been made in recent years by various distinguished persons.

The end result of this combined effort was H. R. 2498, a bill to provide a Uniform Code of Military Justice. Our subcommittee, which includes eight lawyers, four of whom participated in the revision of the Articles of War in the Eightieth Congress, began hearings on March 7. We conducted hearings 6 days a week for almost 5 weeks, during which time a total of 28 witnesses testified. They included representatives of the four major veterans' organizations, four bar associations, including the American Bar Association, the Reserve Officers Association, the National Guard Bureau and the National Guard Association, the Under Secretary of the Navy, the Assistant Secretary of the Air Force, and numerous other well-qualified witnesses. Upon the conclusion of all testimony the subcommittee gave detailed consideration to each article and section of this bill. Our deliberations, exclusive of two executive sessions, are embodied in a transcript of 1,542 pages. As a result of committee amendments, H. R. 2498 was reintroduced. A clean bill, H. R. 4080, with the consent of the full committee, representing our final decisions, is now presented for your consideration. Before opening that consideration, I want to take this opportunity to express my very sincere appreciation to the members of my subcommittee. They have been most diligent and sincere in their efforts and fully deserve the commendation of the full committee in addition to my personal gratitude.

I would like to point out to the committee that section 1 of the bill contains 140 articles. These articles embrace all of the provisions of the proposed Uniform Code of Military Justice. The 13 remaining sections relate to the subject of military justice but are not germane to a Uniform Code of Military Justice and are therefore excluded from section 1 of the bill.

The proposed code is uniformly applicable in all of its parts to the Army, the Navy, the Air Force, and the Coast Guard in time of war

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and peace. It covers both the substantive and the procedural law governing military justice and its administration in all of the armed forces of the United States. If adopted, it will supersede the Articles of War, the Articles for the Government of the Navy, and the Disciplinary Laws of the Coast Guard and will be the sole statutory authority for—

(1) the infliction of limited disciplinary penalties for minor offenses without judicial action;

(2) the establishment of pretrial and trial procedure;

(3) the creation and constitution of three classes of courts martial corresponding to those now in existence;

(4) the eligibility of members of each of the courts and the qualifications of its officers and counsel;

(5) the review of findings and sentence and the creation and constitution of the reviewing tribunals; and

(6) the listing and definition of offenses, redrafted and rephrased in modern legislative language.

The code, while based on the Revised Articles of War and the Articles for the Government of the Navy, is a consolidation and a complete recodification of the present statutes. Under it, personnel of the armed forces, regardless of the Department in which they serve, will be subject to the same law and will be tried in accordance with the same procedures. The provisions of section 1 of the bill will provide for the first time in the history of this Nation, a single law for the administration of military justice in the armed forces.

Among the provisions designed to secure uniformity are the following:

(1) The offenses made punishable by the code are identical for all the armed forces.

(2) The same system of courts with the same limits of jurisdiction of each court is set up in all the armed forces.

(3) The procedure for general courts martial is identical as to the institution of charges, pretrial investigation, action by the convening authority, review by the board of review, and review by the Court of Military Appeals in all the armed forces.

(4) The rules of procedure at the trial including modes of proof are equally applicable to all the armed forces.

(5) The Judge Advocates General of the three Departments are required to make uniform rules of procedure for the boards of review in each department.

(6) The required qualifications for members of the court, law officer and counsel are identical for all of the armed forces.

(7) The Court of Military Appeals, which finally decides questions of law, is the court of last resort for each of the armed forces and also acts with the Judge Advocates General of the three Departments as an advisory body with a view to securing uniformity in policy and in sentences and in discovering and remedying defects in the system and its administration.

And I might say that we view this last function of the Court of Military Appeals as extremely important, as perhaps the most important of the whole bill.

Among the provisions designed to insure a fair trial are the following:

General courts martial:

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(1) A pretrial investigation is provided, at which the accused is entitled to be present with counsel to cross-examine available witnesses against him and to present evidence in his own behalf.

(2) A prohibition against referring any charge for trial which does not state an offense or is not shown to be supported by sufficient evidence.

(3) A mandatory provision for a competent, legally trained counsel at the trial for both the prosecution and the defense.

(4) A prohibition against compelling self-incrimination—and I might say parenthetically that that prohibition is more extensive than that we find in civilian courts and civilian trials.

(5) Provision for equal process to accused and prosecution for obtaining witnesses and depositions and a provision allowing only the accused to use depositions in a capital case.

(6) A provision giving an accused enlisted man the privilege of having enlisted men as members of the court trying his case.

(7) A provision whereby voting on challenges, findings, and sentences is by secret ballot of the members of the court.

(8) A provision requiring the law officer to instruct the court, on the record, concerning the elements of the offense, presumption of innocence, and the burden of proof.

(9) A provision for an automatic review of the trial record for errors of law and of fact by a board of review with the right of the accused to be represented by legally competent counsel.

(10) A prohibition against receiving pleas of guilty in capital cases.

(11) A provision for the review of the record for errors of law by the Court of Military Appeals. This review is automatic in cases where the sentence is death or involves a general or flag-rank officer. A review may be requested by petition on the part of the accused in any sentence involving confinement of 1 year or more.

Special and summary courts martial:

Under present law and procedure there is great variation in the nomenclature, composition, procedure and powers of the intermediate military courts. This bill completely eradicates all of those differences and establishes complete uniformity.

The foregoing constitutes a general summary of the provisions of this bill and I hesitate to belabor the committee with any more detailed explanation of its technical provisions. However, there are a few provisions which gave the subcommittee much concern and to which the witnesses devoted a majority of their testimony, and I feel that it is only proper that the committee should have a full understanding of those provisions.

Article 2, subdivision (3), of the bill, as introduced, apparently conferred very wide jurisdiction over Reserve personnel. Technically speaking, Reserve personnel in uniform or even when taking a correspondence course would have been subject to the jurisdiction of this code. While we do not feel that the armed forces desired such wide latitude, we were unanimous in the decision that the jurisdiction should be limited by statute and not left to regulations. Therefore, we substituted an entirely new subdivision which we feel is entirely proper. You will note that Reserve personnel do not become subject to this code when on inactive-duty training unless such training is pursuant to written orders which are voluntarily accepted and which

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specifically state that the acceptance of such orders will subject that particular Reserve to the provisions of this code.

The original provisions of article 3 (a) provided for a continuing jurisdiction by the military over persons who had returned to an inactive-duty status but had committed an offense against military law while in an active-duty status. The Reserve components voiced strenuous objection to such proposals and it is admitted that those proposals went much further than existing law. As a matter of fact, the military authorities have been most reluctant to prosecute the average offender who succeeds in returning to a civilian status before the discovery of his crime.

On the other hand, the military authorities have found themselves confronted with a lack of jurisdiction to try certain aggravated cases of this character. You will recall the Durant jewel case. That case involved the theft of the crown jewels of Hesse. At the time Mrs. Durant, one of the accused, was apprehended, she was in a terminal-leave status. The point was raised by a petition for a writ of habeas corpus that the Army had ceased to have jurisdiction over the accused since her active service was terminated and she was only completing the unexpired portion of her terminal leave. A writ of habeas corpus was granted in district court but ultimately reversed on the theory that the terminal-leave status is a service status and subjects one to the Articles of War. If charges and specifications had not been served on the accused until after the expiration of her terminal leave, neither the military nor our Federal courts would have had any jurisdiction over the case. You will also recall the more recent Hershberg case. Hershberg was a Navy enlisted man who allegedly abused other American military personnel who were under his supervision while they were all prisoners of war of the Japanese. Hershberg's term of enlistment expired and after 1 day he reenlisted. The Navy then attempted to prosecute him for the alleged abuse of American persons. A writ of habeas corpus was granted in that case, not because it would be unconstitutional to provide for a continuing jurisdiction in such cases, but because the present Navy statute confers no such continuing jurisdiction, and therefore this man was released.

We felt that there was a solution to this problem and our proposed solution is offered in article 3 (a), which is a committee amendment. You will note that it provides for a continuing jurisdiction, provided the offense against this code is punishable by confinement of 5 years or more and provided further that the offense is not triable in a State or Federal court of the United States. We feel that this will provide ample protection against any capricious action on the part of military authorities, will limit military jurisdiction to serious offenses that could not otherwise be tried by military or Federal courts, and will likewise correct the absurd situation of permitting an honorable discharge to operate as a bar to a prosecution for murder or other serious offenses.

Article 15 replaces the present provisions of the Navy for Navy and Coast Guard mast punishment and the present provisions of the Army and Air Force for disciplinary punishment by commanding officers. We were of the opinion that a 50-percent pay forfeiture for 3 months was an excessive penalty for disciplinary infractions by officers. Therefore, we reduced the maximum forfeiture from 3 months to 1

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month. We likewise disagreed with the original provisions of this article which permitted a forfeiture of one-half of an enlisted person's pay for 1 month. Enlisted persons are in a far different pay status than officers and we do not feel that a pay forfeiture is appropriate as punishment for disciplinary infractions by enlisted persons.

This article also provided for confinement for not to exceed seven consecutive days and confinement on bread and water or diminished rations for a period not to exceed five consecutive days. The Army and the Air Force have never used confinement, with or without bread and water, as a disciplinary punishment. On the contrary, it is a provision of long standing in the Navy and Coast Guard. We are of the opinion that this type of disciplinary punishment should not be used ashore. However, we recognize that disciplinary matters aboard ship present an entirely different problem. Accordingly, we have authorized confinement for 7 days or confinement on bread and water or diminished rations for not to exceed 5 days when imposed upon a person attached to or embarked in a vessel. In view of the fact that Army and Air Force personnel are stationed throughout the world and must necessarily spend a portion of their time aboard ship in reaching or returning from such stations, it is intended that the present provisions for confinement with or without bread and water shall not be restricted to Navy enlisted personnel but shall be equally applicable to all other enlisted personnel of the armed forces when attached to or embarked in a vessel. As a result of our amendments, we have achieved uniformity in the types of disciplinary punishments which may be adjudged.

Article 26 provides the authority for a law officer of a general court martial. Under existing law the Navy has no law officer. The Army and Air Force do have a law officer for general courts martial who, in addition to ruling upon points of evidence, retires, deliberates, and votes with the court on the findings and sentence. Officers of equal experience on this subject are sharply divided in their opinion as to whether or not the law officer should retire with the court and vote as a member. In view of the fact that the law officer is empowered to make final rulings on all interlocutory questions of law, except on a motion to dismiss and a motion relating to the accused's sanity, and in view of the fact that the law officer will now instruct the court upon the presumption of innocence, burden of proof, and elements of the offense, we feel that he should not retire with the court with the voting privileges of a member of the court. Article 26, in our opinion, contains the appropriate provisions on this matter.

Article 67 contains the most revolutionary changes which have ever been incorporated in our military law. Under existing law all appellate review is conducted solely within the military departments. This has resulted in widespread criticism by the general public, who, with or without cause, look with suspicion upon all things military and particularly on matters involving military justice.

Every Member of Congress, both present and past, is well aware of the validity of this statement. The original bill provided for the establishment of a judicial council to be composed of at least three members. In view of the fact that this is to be a judicial tribunal and to be the court of last resort for courts-martial cases, except for the constitutional right, which, of course, is inherent in all cases, of

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habeas corpus, we concluded that it should be designated by a more appropriate name.

We likewise questioned the number of members to be provided. As a consequence we have substituted a new subdivision (a)—that is article 67—which establishes the Court of Military Appeals, consisting of three members who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. Such appointees must be members of a State or Federal bar; shall hold office during good behavior; and receive the same compensation, allowances, and retirement benefits as judges of the United States courts of appeals.

We must frankly admit that it is impossible to ascertain with any degree of accuracy the case load which this tribunal must consider. You will note under subdivision (b) that it shall review the records of (1) cases affecting a general or flag-rank officer or including the death sentence, (2) cases which the Judge Advocate General may forward on his own motion, and (3) all cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the court has granted a review. Rather than provide for a greater number of members than three for the Court of Military Appeals, we have concluded that it would be sounder to limit the number to three until such time as the facts may warrant an increase in number. The article as presently written embodies those conclusions.

Perhaps the most troublesome question which we have considered is the question of command control. Under existing law commanding officers refer the charges in general, special, and summary court-martial and convene the courts; they appoint the members of the court, law officer for general courts and counsel for trial; and retain full power to set aside findings of guilty and modify or change the sentence, but are not permitted to interfere with verdicts of not guilty nor to increase the severity of any sentence imposed. We have preserved these elements of command in this bill.

On the other hand, we have included numerous restrictions on command. The bill provides that the convening authority may not refer charges for trial until they are examined for legal sufficiency by the staff judge advocate or legal officer; authorizes the staff judge advocate or legal officer to communicate directly with the Judge Advocate General; requires all counsel at a general court-martial trial to be lawyers or law graduates and, in addition, to be certified as qualified by the Judge Advocate General; provides a law officer who must be a lawyer whose ruling on interlocutory questions of law will be final and binding on the court and who must instruct the court on the presumption of innocence, burden of proof, and the elements of the offense charged; provides that the staff judge advocate of the convening authority must examine the record of trial for sufficiency before the convening authority can act on a finding or sentence; provides legally qualified appellate counsel for an accused before a board of review and the Court of Military Appeals; establishes a civilian Court of Military Appeals, completely removed from all military influence or persuasion, and makes it a court-martial offense for any person subject to this code to unlawfully influence the action of a court martial.

Able and sincere witnesses urged our committee to remove the authority to convene courts martial from "command" and place that authority in judge advocates or legal officers, or at least in a superior

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command. We fully agreed that such a provision might be desirable if it were practicable, but we are of the opinion that it is not practicable. We cannot escape the fact that the law which we are now writing will be as applicable and must be as workable in time of war as in time of peace, and, regardless of any desires which may stem from an idealistic conception of justice, we must avoid the enactment of provisions which will unduly restrict those who are responsible for the conduct of our military operations. Our conclusions in this respect are contrary to the recommendations of numerous capable and respected witnesses who testified before our committee, but the responsibility for the choice was a matter which had to be resolved according to the dictates of our own conscience and judgment.

My final point involves the question of whether or not we shall establish separate Judge Advocate Generals Corps for the Navy and the Air Force, as has already been done in the Army, in Public Law 759 of the Eightieth Congress. Practically every witness who testified before our committee, except departmental witnesses, urged that such corps be adopted. Even though there were no provisions on this matter in the bill, our committee gave a great deal of consideration to the proposal. The Navy and the Air Force strenuously opposed the establishment of Judge Advocate Generals Corps in their services. We came to the conclusion that since we now have a Judge Advocate Generals Corps in the Army and since the Court of Military Appeals will have an opportunity to review the comparatjve results of the Army with its corps as against the Navy and the Air Force without such a corps, that we should permit the services to operate under their present different plans until such time as we may be able to factually determine the best method of operation. In spite of this decision we have reached the conclusion that the Navy and the Air Force are not giving adequate recognition to their law specialists and judge advocate officers, respectively.

It may not be generally known but there is no requirement under present law that the Judge Advocate General of any of the services be a qualified lawyer. We think that that is a deficiency which should be corrected. In view of these conclusions we have added a new section to the bill which appears as section 13.

You will note that it requires that the Judge Advocates General must be members of a Federal or State bar, must be judge advocates or law specialists, and must have at least 8 years' cumulative experience in a Judge Advocate Corps, department, or office, the last 3 years of which, prior to appointment, must be consecutive. Now, in order that there may be no misunderstanding by either the Navy or the Air Force, I want to point out that we are fully aware that the Navy has a number of unrestricted line officers who have law degrees and may qualify as law specialists as well as officers of the line. We do not intend that such officers shall be precluded from becoming Judge Advocates General as a result of this section. We do, however, insist that all Judge Advocates General be legally qualified, with a prescribed amount of experience, and that a substantial portion of that experience be obtained immediately prior to appointment to the office of the Judge Advocate General.

If the Navy or the Air Force have officers who are not law specialists or judge advocates but are otherwise qualified under this section,

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they are not precluded from designating such officers as judge advocate or law specialists immediately prior to appointment. It is to be hoped, however, that neither the Navy or the Air Force will continue to relegate their legal personnel to positions of lessser importance and dignity than their counterparts in the line. We think it entirely sound and proper that the Judge Advocates General be chosen from those who have sacrificed the prerogatives of the line officer in order to follow a legal career in the services. We hope to see some revised thinking on this subject and will view future developments with interest.

Before moving the favorable consideration of this bill, I would like to point out that there are 20 technical amendments and 1 substantive amendment which I recommend that the committee adopt. The technical amendments involve misspelled words, punctuation, and other similar errors which have been discovered in the printing of the new bill, H. R. 4080. If the committee desires, I will be glad to enumerate and explain each of these technical amendments. However, I can assure the committee that they are only corrective and do not go to the substance of the bill.

The one substantive amendment pertains to article 2, page 5, subdivision 11, beginning on line 18, and subdivision 12, beginning on line 24. You will note that subdivision 11 confers jurisdiction over all persons serving with, employed by, or accompanying the armed forces without the continental limits of the United States and certain territories. Subdivision 12 confers jurisdiction over all persons within an area leased by the United States which is under the control of the Secretary of the Department and which is without the United States and certain territories. Since the subcommittee completed its action on this bill, it has been discovered that the United States Navy occupies certain territory in the Subic Bay region of the Philippine Islands, which territory was acquired for the use of the United States by virtue of the 1898 treaty with Spain. This property is under the control of the Secretary of the Navy. We find that under the provisions of subdivision 12, we will have no jurisdiction over persons not otherwise subject to this code who enter this property and commit offenses while on the property. It is considered desirable to have such jurisdiction. On the other hand, we fully recognize the fact that certain limitations have been placed upon the jurisdiction of the United States by virtue of certain treaties and agreements and that this jurisdiction may be further curtailed by future agreements. Certainly we do not desire to arouse the suspicion of any foreign governments by the use of any language in this code which would appear to give our armed forces jurisdiction in excess of obligations which we have already or may in the future assume by treaty or agreement. In order that our intent be made perfectly clear, I offer the following amendment. On page 5, line 18, at the beginning of subdivision 11, insert:

> Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law—

and substitute a small "a" for the capital "A" in "All".

On page 5, line 24, insert the same amendment as in subdivision 11, and, in addition, on line 24, after "by" insert "or otherwise reserved or acquired for the use of".

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The adoption of the proposed amendments in subdivision 11 and 12 will insure the armed forces will have jurisdiction over both leased areas and areas otherwise reserved or acquired for the use of the United States and it will also insure that such jurisdiction is subject to the limitations imposed in any treaty or agreement to which the United States is or may be a party.

Mr. Chairman and gentlemen of the committee, this concludes my remarks on the bill which is now before you. Our consideration of the bill has been as thorough as human endurance will permit. By unanimous vote of the subcommittee I report the bill favorably to the committee and now move its favorable consideration, as amended, by the committee.

The CHAIRMAN. Mr. Brooks, I know I speak the sentiments of the entire membership of the committee. We express our deep appreciation for the outstanding service you and your subcommittee have rendered. Your statement is as clear an analysis of a bill as I have ever listened to. I am glad to note that the bill was reported unanimously by this subcommittee, which has on it some of the most outstanding and distinguished Members of the Congress, and also some very able lawyers. I think you have rendered a service which will have a profound effect upon the services and will meet with general approval throughout the country. I thank you and each member of the subcommittee for the splendid services you rendered.

Now, Mr. Elston, have you any comments to make?

Mr. ELSTON. Only this, Mr. Chairman: In the subcommittee I offered an amendment to provide for a separate Judge Advocates General Corps in both the Navy and the Air Force, the same as is now provided in the Army. It was felt by the chairman that our subcommittee didn't have jurisdiction to pass on that question. So we wrote the bill as the chairman of the subcommittee has indicated.

It occurs to me that possibly it might be better to proceed under the language of the bill as suggested, rather than make an effort in the full committee or on the floor to set up a separate corps.

I appreciate, as do all members of the subcommittee, that setting up a separate corps is quite an undertaking. The question might, of course, be raised that we are not being uniform in our administration of justice when we provide a separate corps for the Army and not provide one for the Navy or for the Air Force. I think the answer to it is that it is a big step and it might be best to try it in the Army first where the great burden of cases arise, anyhow. If it works well, it can always be handled by subsequent legislation. If it doesn't work well, we can find it out. But to set up the corps now would be expensive and would be quite an undertaking.

So I came to the conclusion that it is best probably not to offer the amendment again, but to proceed with this experiment and see how it works out in the Army.

I offered another amendment in the committee which we considered. I understand the chairman has also thought about the matter. That was, with respect to the Court of Military Appeals, that provision be made that no more than two of the members of the court shall be of the same political party.

The CHAIRMAN. I may suggest, Mr. Elston, I am going to offer that amendment for the consideration of the full committee. I think

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in view of the fact that this is a new military court of civilians, it is nothing but right and proper that it be a nonpartisan court.

Mr. ELSTON. I say, if the chairman offers that, I will be glad to support it. The reason we didn't write it in in the subcommittee was I think because we felt we were going to make this court conform as nearly as possible to our United States courts of appeals.

The CHAIRMAN. That is right.

Mr. ELSTON. And there is no provision in the law whereby they shall be bipartisan. However, this is a special court, and I believe that the amendment would be in order.

I don't know, Mr. Chairman, that there is anything further I want to say except that as a member of the subcommittee I want to take the opportunity to commend the chairman of the subcommittee for his very diligent efforts in bringing forth this bill. He worked extremely hard in perfecting it. And, as he stated, our attendance was excellent. All members of the committee were present on most occasions. While he has attempted to give most of the credit to the members of the committee, he, himself, is entitled to a great deal of credit for perfecting this bill.

The CHAIRMAN. Thank you, Mr. Elston.

Now, members of the committee, are there any comments from any members of the committee, or any suggestions that any members of the committee desire to offer of a general nature?

If not, we will take up——

Mr. KILDAY. Mr. Chairman, I agree that the bill has been very carefully prepared. I served on the Elston committee in the last Congress and I know how difficult this situation is. I agree with the compliments that have been made to the subcommittee.

I wonder, with reference to subsection 11, on page 5—of course there has been an amendment proposed by the subcommittee, which they seemed to have some timidity about offending the feelings of people or something——

Mr. BROOKS. Well, let me say this; and I would like to say it off the record, too, if I can.

The CHAIRMAN. Off the record.

(Statement of Mr. Brooks made outside the record.)

Mr. KILDAY. I agree that persons serving with the armed forces outside the continental limits of the United States must be subject to military law, as they always have been.

We have a different situation now than we have had heretofore with armed service all over the world.

Now, recently there was a case in which two men, who had been employees of the post exchange in Germany, and had been charged with embezzlement, I believe, or some other offense, before a court-martial—and they were civilian employees—returned to the United States. The Army contends that they returned illegally, that they had been restricted to the area, and they simply got on a ship and came home. After they got here the Army picked one of them up out in the Middle West, put him on an airplane, and flew him to Germany without any legal proceeding of any kind. The other one was caught down in my town and put in the post prison at Fort Sam Houston. Somebody, I don't know who it was, advised him to sue for a writ of habeas corpus. He did.

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Now, the point I wanted to make is whether we ought not to consider here whether the Army or the armed services, any of them, should have the power to place a civilian under arrest and remove him from the United States to any place else in the world without any type of removal procedure or extradition, or anything of that kind. If these men had been charged with even capital offenses in one State, and apprehended in another, they couldn't be removed without extradition. If they had been apprehended in one judicial district and charged with an offense in another Federal judicial district there would have to be removal proceedings.

Now, this I don't believe will be a temporary situation. I don't believe we are going to be able to get the armed services back within the continental limits, or that we are going to be able to handle overseas affairs by military personnel exclusively.

I called this to the attention of the chairman of the subcommittee while the bill was under consideration. I do believe we ought to give serious consideration to that question.

The court has not as yet determined the habeas corpus proceeding. But if the law is that the military can take a civilian into custody and remove him to any place in the world without any type of judicial procedure, then we should put something into the law to prevent that being done.

Mr. BROOKS. Mr. Chairman, may I ask Mr. Smart to comment on that. We covered that in our committee hearings.

Mr. SMART. Well, in addition to that, Mr. Chairman, since the conclusion of the hearings, I have discussed that very matter with the Judge Advocate General of the Army. It is admitted that it is an unusual procedure. It has not arisen in the past, to my knowledge. I am under the impression that the gentleman who was taken back to Germany is under very light restriction over there, and that he is perhaps being held pending the outcome of the habeas corpus proceeding which has been filed by the other gentleman from Texas.

Admittedly, the whole situation will turn on the habeas corpus proceeding which is now in process of being determined in the Federal court.

It is a little bit difficult to say what we should do here, until the Federal court acts. Once they have acted and clarified the law, if the Congress is then of the opinion that regardless of the Supreme Court decision you should further limit the jurisdiction of the military, we can proceed by amendment to do that. But that is a matter of policy for the Congress.

Mr. KILDAY. You say he is under moderate restraint. The point is that he has been taken from his home out in the Midwest to Germany. I don't know how he is subsisting there. I do know that these men have been under very heavy expense, through the employment of attorneys, and things of that kind.

Now, as to waiting until the Court acts, I don't know whether this man is financially able to take a case to the Supreme Court. That is a most expensive proceeding, as you know.

Mr. BROOKS. Mr. Smart, could you explain the preliminary hearing features, too.

Mr. SMART. Sir?

Mr. BROOKS. I think that can be reached, too, to some extent, on pretrial investigations, with the restrictions that we recommended be placed in reference to pretrial investigations.

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Mr. SMART. The difficulty with that, Mr. Chairman, is that when you conduct a pretrial investigation it must be conducted in the presence of any witnesses who might appear against the accused.

Now, in this case the accused was suspended from his activities as a manager, I think, or some official in a PX pending an investigation of alleged offenses which he may have committed in regard to funds. While he was under that suspension and pending that investigation he fled from Germany and managed to get back to this country. Now, admittedly, the witnesses are in Europe. The accused is here. What are we going to do—bring the witnesses over here by plane?

Mr. KILDAY. No; I don't raise that question. I just want him treated as anyone else charged with an offense, that is, any other civilian. Surely there should be some forum to which he would be taken to determine whether or not he was removable, or as between States where extradition should lie.

Mr. SHORT. While these two men were civilians they were employed by the Army and subject to military law; is that correct?

Mr. KILDAY. That is right.

Mr. SMART. That is correct.

Mr. SHORT. The Army lost no jurisdiction over them merely because they fled from Germany to the United States. I should think they would be able to pick them up anywhere.

Mr. KILDAY. In this particular case that was true. But suppose after they had come home the service decided to take them back to Europe, or to Asia, or to anywhere else. It is a most high-handed thing. He should have some place——

The CHAIRMAN. Now, is there any amendment pending to that section of the bill?

Mr. SMART. There is not, Mr. Chairman.

The CHAIRMAN. All right.

Any questions from any members of the committee?

Mr. COLE. Mr. Chairman, I have two or three questions I would like to ask Mr. Brooks.

The CHAIRMAN. Mr. Cole.

Mr. BROOKS. Surely.

Mr. COLE. First, the provision of the bill which denies the law member the right to vote in the deliberations of the Board—is that in conflict with the recommendation of the Gray Board, or not?

Mr. BROOKS. Mr. Smart, do you want to answer that?

Mr. SMART. You mean the Morgan Board, Mr. Cole?

Mr. COLE. The Morgan Board.

Mr. BROOKS. Yes.

Mr. SMART. That embodies the recommendation of the Board.

You may recall that when Secretary Forrestal appeared for the first statement on this bill when it was presented to the full committee, he said that there were three or four points upon which the main committee—the Morgan committee, with the one Under Secretary and two Assistant Secretaries—could not agree. This is one of the places where they disagreed.

It is historical that the law member has always retired and deliberated with the court and voted with the court in the Army. In the Navy they have no law member at all. So it is not a question in the Navy. Now, the Army, of course, and the Air Force, wanted to continue their same practice. The Navy, and Professor Morgan,

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vanted to exclude this law member because now he has more judicial uthority than heretofore granted. So the matter was submitted o Secretary Forrestal. He concurred with Professor Morgan and he Navy. So the law member, by that process, was excluded.

Mr. COLE. I have no disagreement with it. It was simply to seek nformation.

Another question is, What was the attitude of the subcommittee with respect to requiring that the members of this Court of Military Appeals have had some military experience or background?

Mr. BROOKS. I had better answer that.

The subcommittee did not want this in any sense to be a military court. If anything, I would say that the subcommittee was interested in preventing a military man from being used, more than in requiring military experience of a civilian. I don't think we put any restrictions on that.

Mr. COLE. I quite agree that the individual should be a civilian and not a professional military man. It does seem to me that it might be advantageous if that individual, as a civilian, had had some military experience. I just wondered what the attitude of the subcommittee was on that score.

Mr. BROOKS. The subcommittee didn't provide anything in the bill requiring military experience.

As I say, again, the big complaint has been that there was too much military command, and what we are trying to do is to get away from that. The real protection in this bill is in the Court of Military Appeals, which is a final tribunal which controls over-all operation of the whole thing. We are anxious that that not be militarized in any sense.

The CHAIRMAN. It may not be militarized in the sense that you will have an officer from the military serving, but it is a great thing for the President to take into consideration that the men that he is appointing to this position do have a military background as a civilian called to service.

Mr. BROOKS. That is right.

Mr. KILDAY. Mr. Chairman, the language of the bill is that he shall be appointed from civil life.

The CHAIRMAN. That is right.

Mr. KILDAY. I agree with the gentleman from Louisiana that this ought not to have a military background. I think it is very important that it not have.

I am just wondering if we ought not to include in there language similar to that that we have affecting the Secretary of National Defense.

The CHAIRMAN. If you did you would then disbar a great many qualified men throughout the Nation.

Mr. KILDAY. I don't want to see a retired Judge Advocate General on this court.

The CHAIRMAN. Of course, the President isn't going to do that. But there are many Reserve officers who are distinguished lawyers who should be considered.

Mr. KILDAY. It doesn't apply to the Reserves.

The CHAIRMAN. I know that.

Of course, you don't want any Regular Army officer put on this court.

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Mr. KILDAY. I think we ought to say so. I think we ought to use the language similar to that which we used with reference to the Secretary of National Defense.

The CHAIRMAN. May I suggest to my distinguished friend from Texas the only amendment we ought to put in this:

Not more than two judges of such court shall be appointed from the same political party.

I am offering, on page 55, line 4, after "Senate," insert the following new sentence,

Not more than two of the judges of such court shall be appointed from the same political party.

I hope the committee will adopt it because I think it gives strength to it. It makes it nonpartisan and shows the whole tendency of the armed services to be a nonpartisan organization all down the line.

Without objection, the amendment the chairman has offered is agreed to.

Now, I want to take——

Mr. COLE. Mr. Chairman, I want to inquire further——

The CHAIRMAN. Mr. Cole.

Mr. COLE. Of Mr. Brooks, chairman of the subcommittee——

The CHAIRMAN. Yes.

Mr. COLE. I notice the provisions of the bill do not become effective for a year.

Mr. BROOKS. Yes.

Mr. COLE. I wonder what were the considerations involved that justify postponement for a year.

Mr. BROOKS. There are numerous considerations. The whole set-up has to be revamped. Then they have to provide additional judge advocates in the different branches. That is going to be a big problem I think, if I am not mistaken, it was the Air Force who testified that they needed six or seven hundred lawyers. I don't know where they are going to get the personnel from. But the personnel is a ruling consideration. This bill requires the use of more lawyers and legally trained men than preceding set-ups.

Mr. RIVERS. It is not intended, however, that the Joint Chiefs of Staff shall get together and say they don't need them.

Mr. BROOKS. That is a prevailing consideration for postponing the operation of it.

Mr. Smart, do you want to comment?

Mr. SMART. I might add: You will recall that when we made the revision of the Articles of War a period of 8 months was provided for the Department of the Army to write a new manual. That is a monumental task. Now, this is going to be much more difficult than that because all of the three services are going to have to sit down and write a manual, which is agreeable across the board, governing military justice and the issuance of rules and regulations. They must sit down and do it in the same manner that the Morgan Committee and the working group wrote this bill. It is going to be a difficult undertaking and they must really work to do it within a year.

Mr. JOHNSON. Mr. Chairman, could I ask a question, please?

The CHAIRMAN. Yes, sir.

Mr. JOHNSON. I want to ask the subcommittee chairman about the provision regarding depositions there. As I heard your state-

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ment, I think you said that the depositions are only for the accused in a capital case.

Mr. BROOKS. Yes.

Mr. JOHNSON. Does that mean, for instance, that if a man is accused of robbery you can't get a deposition?

Mr. BROOKS. No. It means in capital cases that only the defendant can use depositions. The prosecution can't. In the other cases either side can use them.

Mr. JOHNSON. Then I want to ask you another one. You said, as I listened—and I may have gotten it wrong—that appeal was automatic in a death case.

Mr. BROOKS. Yes.

Mr. JOHNSON. That is for everybody.

Mr. BROOKS. That is right.

Mr. JOHNSON. And also for an officer of flag or general rank. How did you happen to make the demarcation there for those types of officers, that they should have automatic appeals?

Mr. BROOKS. Do you want to answer that, Mr. Smart?

Mr. SMART. I think, historically speaking, Mr. Johnson, you will find that officers are not involved in general courts-martial cases unless they are most serious offenses. Likewise, for an officer who has spent a sufficient period of time in the service to have attained general or flag rank it involves a much greater consideration, in my opinion, than you have with perhaps a recruit who has been in for 90 days. That seems to be a portion of the thinking.

Now, you must recall the further provisions of the bill. I think I can see that you feel, perhaps, that persons, enlisted or officers, below flag or general rank, are perhaps not getting as good a break under this bill as officers of flag or general rank. I believe that the appellate provisions in here are so much broader than you get in any civilian court in the United States that it is felt that they are adequately protected and that their rights will be taken care of.

That is the only answer, sir, that I can give you.

Mr. JOHNSON. What I was thinking was not the case of a recruit. But why shouldn't a captain of 30 years have an automatic appeal if the admiral has?

Mr. SMART. I am sorry I cannot give you a more lucid answer than that. But the Secretary of Defense came to that decision along with Professor Morgan who is certainly all civilian and not service. They subscribe to that provision.

Mr. KILDAY. It has always been the law, hasn't it?

Mr. SMART. Yes, sir; it is a perpetuation of existing law.

Mr. JOHNSON. What advantage does that give an admiral? He can take an appeal as a matter of right, can't he?

Mr. SMART. Not necessarily. If this provision were not in there, and he were convicted of an offense which involved a sentence of less than 1 year, then his appeal would not be automatic.

Of course, I cannot conceive of the services trying a general or an admiral and giving him such a sentence as that. He is either going to get the book or he is going to get nothing.

The CHAIRMAN. Mr. Smart, I want to thank you for the services that you have rendered. You know this bill section by section, and you have been of great aid and assistance to Mr. Brooks and his sub-

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committee. You merit the confindence that we have had in you. You deserve the full thanks of the committee for the splendid service you have rendered.

Now, I want to talk just briefly about section 13. I want to say that I am glad the committee did not establish for the Navy and the Air Corps the Judge Advocate Generals Corps. I think the reasoning as stated by Mr. Elston is sound. We want to try it out in the Army. If it works satisfactorily in the Army we may later on apply it to the other two branches of the armed services. I am glad that you have written in some qualifications as to who shall be Judge Advocate General in the Navy and in the Air Corps. But I am a little bit apprehensive that——

Mr. SHAFER. What page is that on, Mr. Chairman?

The CHAIRMAN. That is page 99.

I am a little bit apprehensive that the restriction is so defined that it is going to be a little difficult, as it is set up in the Navy today, to get anyone immediately for Judge Advocate General. Of course, we established the law specialist. There are some 250 law specialists now in the Navy. They have certain authority. One of them is that *they* can't command at sea. We want to get our Judge Advocate General ultimately from that group. But this last line disturbs me. On line 24, after the word "Office"—and that applies to the Navy Department—it says "the last three years of which, prior to appointment, shall be consecutive." Now, the last 3 years is going to fix it so they won't have anybody down there.

Why wouldn't we accomplish the same thing by just leaving out *the* words "the last," which will be a good standard. Then there will be three qualifications: He must be a lawyer and have had at least 8 years at the bar; he must be a law specialist, and 3 years of which prior to appointment shall be consecutive. That would accomplish practically the same thing, and might give them a little leeway. Because as I understand the picture in the Navy Department today, if this bill went into effect today there is not a single officer in the Navy *that* could qualify as Judge Advocate General. With this restriction in there, there will be probably three, so that would be by legislation almost hand picking the Judge Advocate General of the Navy. But there would be a few more that could be considered if you left out the words "the last."

Now, we have to have a good standard, and you want a high standard. For a long time I thought about having law specialists. We have established law specialists. From that group we want to get our Judge Advocate General. I think the committee would be wise if we left out "the last."

I will ask, Mr. Elston, what your reaction is——

Mr. RIVERS. Mr. Chairman, that was my amendment.

The CHAIRMAN. And what is your reaction, Mr. Brooks? We don't want to fix it so they can't get a Judge Advocate General.

Mr. BROOKS. I understand the Navy's position. They have a good many very capable lawyers doing line duty there. Of course——

The CHAIRMAN. But they are not law specialists.

Mr. BROOKS. I personally think that would be all right, to liberalize that amendment some. However, I hope personally that the Navy does follow the policy of utilizing——

The CHAIRMAN. The law specialists.

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Mr. BROOKS. The legal experience in the proper places.

The CHAIRMAN. That is right.

Mr. RIVERS. Mr. Chairman——

The CHAIRMAN. You see, for a great many years the Judge Advocate General was not a lawyer. It only happened in the last four appointments that the Judge Advocate General has been a lawyer. You are doing the right and proper thing to say that the Judge Advocate General must be a lawyer. For that reason we established a law specialist group in the Navy, so that we would have people who are just qualified for law work. And, as I say, we have some 250 that are law specialists.

The three qualifications would be that he must be a law specialist, must have 8 years' experience, and 3 years of which prior to appointment shall be consecutive.

Mr. SASSCER. Why make it consecutive at all?

The CHAIRMAN. Well, because they will be down there. That is all right. I have no complaint about that. But I think if you leave the words "the last" in there you are making it too restricted.

What do you think of that, Mr. Elston?

Mr. ELSTON. Mr. Rivers offered the amendment, and I assume had a particular reason for doing so. May I suggest we hear from him?

Mr. RIVERS. Mr. Chairman, the reason for proposing the amendment was that we didn't feel that the head of this corps should be a man that had been removed for any period of time from actually participating in this type of work. That was the reason for the "consecutive" in there.

The CHAIRMAN. That is right.

Mr. RIVERS. Now, if you can accomplish that in some other way, why, it is all right.

The CHAIRMAN. Why don't you accomplish it by leaving out the words "the last"?

Mr. RIVERS. I would have no objection. We didn't want any group to be demoralized by their going somewhere else and picking somebody else and putting him there who was not up to the last word on the work.

The CHAIRMAN. That is right.

Now, you have two standards. One is he must have 8 years' experience as a lawyer.

Mr. RIVERS. That is right.

The CHAIRMAN. The other is he must be a law specialist.

Mr. RIVERS. That is right.

The CHAIRMAN. Those are two standards. Now, the other is 3 years must be consecutive.

Mr. RIVERS. That is what I say. He should have a definite and uninterrupted contact with that type of work.

The CHAIRMAN. That is right. I agree with you thoroughly. There is no need for putting "the last" in there.

Mr. RIVERS. I want to ask Mr. Smart if he has anything to add to that particular thought, because I tried to work it out with him.

Mr. SMART. Of course, I don't wish to impose my feelings upon the committee.

The CHAIRMAN. It is always a pleasure to have the benefit of them, because you think soundly.

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Mr. SMART. Well, for better or worse, I would personally oppose the deletion which you suggest, Mr. Chairman.

Mr. DURHAM. Well, may I ask you this question.

Mr. SMART. Yes, sir.

Mr. DURHAM. What effect would it have upon the present corps establishment in the Army?

Mr. SMART. It will have no effect upon the corps in the Army. This will only go to the Navy and to the Air Force.

Mr. RIVERS. That is right.

Mr. SMART. As of today, the thing that can happen and is happening for every Navy Judge Advocate General who is selected is this. He is one of the unrestricted line officers. His primary love is the sea and the love of command. He happens by virtue of the fact that the Navy has sent him to a law school to have acquired a law degree at Government expense. Then he fluctuates back and forth from the line into the Judge Advocate General's office.

Now, if you are ever going to encourage these men, and there are 241 of them in the Navy today who are law specialists and who are forbidden to command anything at sea and only so much ashore as the Secretary of the Navy will permit—and that is section 401 of the Officer Personnel Act of 1941——

The CHAIRMAN. Why don't you accomplish that by keeping the words "law specialists" in there?

Mr. SMART. I think not, Mr. Vinson, for this reason——

Mr. RIVERS. You can't do it.

Mr. SMART. You will note that the Navy is not precluded from appointing any unrestricted line officer to be a law specialist the day before they appoint him to be the Judge Advocate General.

The CHAIRMAN. Now, in connection with that, Mr. Smart, I would say that would be a sharp practice on the part of the Navy. It was intended by the act to make it a career. It was the intention to have a man accept appointment as a law specialist and go to work as a law specialist—to bona fide be a law specialist and not have it used as a subterfuge to get a man a position. When we used the words "law specialist" we wanted it understood that a man gave up his right to command, so that he could specialize in that over a period of years, and not just to get a job.

Mr. KILDAY. Mr. Chairman——

The CHAIRMAN. It would be a bad practice. It would be an awful bad practice if the Navy says today—here is a captain: "We want to make you Judge Advocate General. You have to be a law specialist. Tomorrow we make you a law specialist." That would be a sharp practice. It would affect morale. It would destroy the very thing we want to do, and that is to have men qualified in law.

Mr. RIVERS. If that amendment is left as it is, there is no way they can do it. If you have the prohibition there, they can't get around it. And, by the same token, it applies to the Air Force.

The CHAIRMAN. As long as you keep "law specialists" in there, I think we answer the question. Then the man must have elected to become an EDO or law-specialist officer, or the other special group. He must not do it just for the purpose of being favorably considered by the Department. Otherwise the Department is subject to criticism for doing it.

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Mr. KILDAY. Mr. Chairman, may I ask this question. The law specialist is a relatively new group in the Navy, isn't it?

The CHAIRMAN. About 2 years ago we established specialists in law.

Mr. KILDAY. Aren't they of relatively low rank at this time?

The CHAIRMAN. Yes.

Mr. SMART. I know——

The CHAIRMAN. There are only three captains.

Mr. SMART. There are captains.

Mr. KILDAY. I understand from the chairman that there are three.

The CHAIRMAN. Three captains.

Mr. KILDAY. Now, in the practical working of this—I have no background on this Navy part of it, and I want information—if you restrict it to law specialists outside of these three you are going to have to go to rather low rank; isn't that correct? And another question I want you to answer, both at the same time, is this. As I understand the present promotion system in the Navy, outside of your law-specialist corps a man has to have periodic sea duty in order to gain his promotion.

The CHAIRMAN. That is right.

Mr. KILDAY. So if you put the full restriction you have in the bill now in, I don't see how it is going to be practical to work it, unless you should establish a separate Judge Advocate Corps in the Navy. And in that connection I think we ought to examine into abolishing it in the Army, as far as that is concerned.

Don't those two questions exist—that your law specialist is relatively new and a relatively low ranking group, which in time, of course, will acquire rank, and the present promotion system requires duty at sea which would prevent a man from qualifying?

Mr. SMART. Mr. Kilday, in answer to your question, there are Navy line officers today—we will take Captain Nunn as one, who is a well-qualified lawyer and also as unrestricted line officer. He can become Judge Advocate General if he has 8 years' cumulative legal service. There is also today in the Regular Navy Captain Woods, who is now the Assistant Judge Advocate General.

Mr. KILDAY. But, under this, wouldn't Captain Nunn be prohibited from being made Judge Advocate General?

Mr. SMART. I don't know how much cumulative legal service he has.

Mr. KILDAY. Because he is a line officer he could not become Judge Advocate General.

Mr. SMART. Wait a minute. This bill does not become effective until 1 year after it is enacted.

Mr. KILDAY. You don't want to pass a law here to give them time to fill it up.

Mr. SMART. I think it needs some time.

The CHAIRMAN. Suppose the present Judge Advocate General should retire. Suppose he had to retire. Then there would be nobody who could take his place. Under this language, today not a man can qualify for Judge Advocate General except the one in the job right now. He is excluded from this status. Now, that is a serious situation because life is uncertain. So we will be confronted with the situation where we are without a Judge Advocate General.

Mr. SMART. I take this position, Mr. Vinson. The present incumbent, Admiral Russell, has been the Judge Advocate General of the Navy for 1 year.

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The CHAIRMAN. That is right.

Mr. SMART. His appointment is for four.

The CHAIRMAN. That is right. Now, suppose he passed away. You wouldn't have anybody down there.

Mr. SMART. Oh, yes.

The CHAIRMAN. Who?

Mr. SMART. He is not precluded until 1 year after this bill becomes effective. The Secretary of the Navy can appoint anybody in the Navy to be Judge Advocate General.

The CHAIRMAN. That is the only saving clause in it.

Mr. SMART. I merely make this point, Mr. Chairman, that there must be a starting place sometime. If you are going to recognize these people who surrender their command prerogatives, now is the time to do it.

The CHAIRMAN. I am perfectly willing to start off by keeping him a law specialist and build that up, because it was intended to have some effect in the Judge Advocate General's establishment. But when you so restrict it that the Department can't get the best talent then we are not best serving the country.

Mr. SMART. Of course——

Mr. RIVERS. Mr. Chairman, that is exactly what the amendment guarantees. It rewards these people who spent their time and their effort in a technical and in a specialized sense——

Mr. KILDAY. It has been in effect for 2 years now.

Mr. SMART. I merely make this prediction, under the amendment proposed by the chairman where 3 years of any of that 8 years may be consecutive. Say he comes out of law school and he spends that first 3 years in law work, and then he goes to sea. And say he has been back at sea most of his time for the next 20 years, we will say, while he is attaining the grade of captain in the Navy. He has spent no time whatsoever in the office of the Judge Advocate General within 1, 2, 3, or 5 years prior to his appointment as the Judge Advocate General.

I make this prediction, that under that amendment you will never see a law specialist Judge Advocate General of the Navy. He shall always be an unrestricted line officer. If that is what you wish certainly, gentlemen, I subscribe to it.

The CHAIRMAN. No; we don't want that.

Mr. SHORT. You get rusty fast there.

The CHAIRMAN. To bring it to a head——

Mr. KILDAY. Mr. Chairman, I want to make myself clear here. I agree thoroughly with the objective here, but I don't believe it is of practical accomplishment within the next few years. If this thing was postponed for a period of 5 years I would agree with you thoroughly but when you have a law specialist group that has been set up within the last 2 years, and you are going to limit it to those relatively young low-ranking men, most of them—I understand there are three captains, of course—then you are unduly restricting it.

Mr. ELSTON. Mr. Chairman.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. One of the reasons why I didn't feel we should press the amendment to set up a separate Judge Advocate General's Corps was because of this very provision in the law. I felt that with this provision in here we would be getting capable and highly trained

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law specialists in the Judge Advocate General's office of the Navy and in the Air Force, as well as in the Army. I feel that under the chairman's amendment, if it is to prevail, the situation changes a little bit. You might have the very situation that Mr. Smart referred to.

The CHAIRMAN. I think, members of the committee, in view of the work of the subcommittee and the fact that they have thought about this matter, I won't bring it up for consideration. I won't offer any amendment at all. We will fight it out or battle it out as time rolls on to see which works best. We have to get this bill through. I don't want to bring on here a big issue about a corps, because there is powerful argument for a corps. There might be a good reason for it. We probably can handle this.

Now, is there any committee amendment or amendment to offer, Mr. Brooks?

Mr. BROOKS. Mr. Smart, you have a number of committee amendments.

Mr. SMART. Yes.

Mr. BROOKS. Most of which are technical.

The CHAIRMAN. Including grammatical——

Mr. BROOKS. I would say that most of them are grammatical.

The CHAIRMAN. Well, without objection, all the technical amendments will be agreed to.

You had an amendment of substance, which I will ask you to report.

Mr. BROOKS. Yes, Mr. Chairman.

Mr. SMART. Mr. Chairman, may I offer a copy of the proposed amendments for the record?

The CHAIRMAN. All right, put them in the record.

(The amendments are as follows:)

AMENDMENTS TO H. R. 4080

On page 5, line 18, following "(11)", insert "Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law," and substitute a small "a" for the capital "A" in "All".

On page 5, line 24, following "(11)", insert "Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law," and substitute a small "a" for the capital "A" in "All", and after the word "by" insert "or otherwise reserved or acquired for the use of".

On page 6, line 2, substitute a capital "T" for the small "t" in "territories".

On page 6, line 18, delete "after apprehension", and on line 19, after "shall", insert "after apprehension".

On page 15, line 15, add "s" to "subdivision".

On page 20, line 24, hyphenate the words "court martial".

On page 25, line 4, insert a comma after "trial counsel".

On page 39, line 16, hyphenate "court martial".

On page 43, line 6, substitute "otherwise" for "other".

On page 54, line 13, substitute "Court of Military Appeals" for "Judicial Council".

On page 55, line 4, after "Senate.", insert "Not more than two of the judges of such court shall be appointed from the same political party."

On page 56, line 3, delete "g" from "withing".

On page 57, line 9, after "report", substitute "to" for "the", and in line 12, after "cases", insert "and".

On page 58, line 18, substitute a small "a" in "Article".

On page 58, line 25, substitute a dash for the period.

On page 59, line 12, substitute "Military" for "The".

On page 60, line 11, hyphenate "bad conduct".

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On page 69, line 6, substitute "or" for "at".
On page 77, line 17, after "place", substitute "or" for "of".
On page 79, line 23, delete "pro-".
On page 99, line 5, substitute "dismissal" for "dismissed".
On page 99, line 6, hyphenate "bad conduct".
On page 99, strike the proviso beginning on line 25 and ending on page 10 line 2, and substitute the following new proviso: "*Provided*, That when the Coas Guard is operating as a service in the Treasury Department the provisions of th section shall not be applicable thereto".

The CHAIRMAN. Mr. Sasscer.

Mr. SASSCER. Yes, Mr. Chairman, please, sir, briefly.

I notice as to the punishment for the various offenses most of them end up with "shall be punished as a court-martial may direct." As I understand, that means there is no maximum limitation of sentence that the court can impose; is that right?

Mr. BROOKS. Except death, as I understand it. It stipulates that you can't give death, but you can give anything less than that. That is the historic position of the services.

Mr. SASSCER. It says—

any person who behaves with disrespect to his superior officer shall be punished as a court-martial may direct.

Now, suppose there was some minor disrespect. They could still give him life?

Mr. BROOKS. That is true. But I can tell you this. He can be acquitted in the first instance. If he is not, the reviewing officer can take it over and say for disciplinary reasons it is excessive and it can be reversed. If not, he has his appeal and it can be reversed on appeal. Then the Judge Advocate General can reverse it as being wrong and remit the entire sentence. If he fails to do it, it can then go to the Court of Military Appeals, who can do the same thing. Then the Secretary of the service can take it over and remit the sentence if it is wrong. Then, if none of those do it, the President of the United States can step in and do it, too.

Mr. SASSCER. I understand all that. But the committee still feels there shouldn't be a limitation on maximum sentences?

Mr. BROOKS. That is true.

And I had in mind myself, and I am sure the other members of the committee had in mind, too, cases like the stealing of cigarettes over there during the war. So many cigarettes were being stolen that the boys on the firing line wouldn't get any cigarettes at all. To give those fellows who stole a carton of cigarettes 3 months or 6 months in confinement didn't mean a thing. It didn't help any because it meant only 3 months or 6 months out of the firing line. Naturally, a person wouldn't object to them. They gave them sentences from 10 to 15 to 20 years for stealing just a few cartons of cigarettes, which is terrific. But it did stop the practice which no other sentence would stop.

Mr. SASSCER. In other words, the committee feels there should be no maximum sentence, regardless of that?

Mr. BROOKS. That is true.

The CHAIRMAN. Now——

Mr. SASSCER. Just one thing further, Mr. Chairman.

The bill, as I see it, provides for a secretive vote of the various members. What happens where one votes 10 years and one 7 years and one votes 2 months, and so forth?

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Mr. BROOKS. Mr. Smart is about to reach that. The President stablishes maximum penalties for all crimes and that becomes a part f the code; isn't that true, Mr. Smart?

Mr. SMART. That is correct, Mr. Brooks.

Mr. BROOKS. Will you explain that to the committee?

Mr. SMART. I have before me the Manual for Courts-Martial, Inited States Army, 1949. Those are the rules and regulations which re prescribed by the President to govern the administration of mili- ary justice within the Department of the Army. Within this manual here is a table of maximum punishment.

Mr. SASSCER. That supersedes this law?

Mr. SMART. Well, it supplements—not supersedes, sir.

So when it says here "may be punished as a court-martial may irect," they must always in time of peace refer to the table of maxi- num punishment and can give no more punishment for a specific crime hat is allowed in the table of maximum punishment. That is not true n time of war.

The CHAIRMAN. Now, any committee amendments?

Mr. BROOKS. You have one substantive amendment, Mr. Smart, hat you might read to the committee.

Mr. SMART. Mr. Chairman, I think you read that to the committee, n subdivisions 11 and 12, of article 2, on page 5. That pertained to he treaty regulations with the Philippines.

The CHAIRMAN. That is right.

Mr. SMART. I might say there——

The CHAIRMAN. Read the amendment and offer it.

Mr. SMART. On page 5, line 18, following the figure "(11)", insert:

Subject to the provisions of any treaty or agreement to which the United States or may be a party, or to any accepted rule of international law—

nd substitute a small "a" for the capital "A" in "All"; the same mendment on page 5, line 24, following the figure "(12)"; and, in ddition, on line 24, after the word "by" insert—

r otherwise reserved or acquired for the use of.

That, of course, covers the treaty situations we have. It will give ilitary jurisdiction under prescribed circumstances, over any other eople, who are not exempted by any treaty or agreement to which the Inited States is a party.

I might say to the chairman and gentlemen of the committee that have called the State Department on this, because I realize that this s a delicate matter. We don't want to create any unfounded fears n the minds of any Government, whoever they may be—Philippines r otherwise. I have talked to Miss Fite, an attorney who is in the tate Department. And in addition I have talked to Mr. Snow, an ttorney in the State Department. They have reserved the right to le a report on these amendments, but said to me that, on the face of t, the proposed language appears acceptable.

Mr. BROOKS. Mr. Chairman, I move the adoption——

The CHAIRMAN. Without objection, the amendment offered by Mr. mart in behalf of the subcommittee will be agreed to.

Now, any other amendments or any comments from any members f the committee?

If not, we will call the roll and all in favor of the bill being reported ut as amended, when his name is called, vote "aye"; and all opposed ote "no."

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Mr. CLEMENTE. Mr. Chairman, you made a suggestion that no more than two of the board be of the same political party, but we didn't vote on it.

The CHAIRMAN. Oh, yes.

Without objection, the amendment is agreed to.

And, without objection, call the roll.

(Roll call.)

Mr. HARPER. Twenty-five.

The CHAIRMAN. Is that all?

Mr. HARPER. Yes, sir; 25.

The CHAIRMAN. A quorum being present, and 25 having voted "aye" and none having voted "no," the bill is unanimously reported.

Now, members of the committee, I am going to ask you to permit me to make a departure from the usual procedure, if it is satisfactory to my distinguished colleague on my left. I am going to ask that the rule be written so that there will be 3 hours general debate, and the rule would further designate one-half to be controlled by the gentleman from Louisiana, Mr. Brooks, and one-half of it be controlled by the gentleman from Ohio, Mr. Elston. Ordinarily the rules prescribe that one-half shall be controlled by the chairman and one-half by the ranking minority member.

Is that satisfactory to you?

Mr. SHORT. Perfectly.

The CHAIRMAN. In view of the fact that these gentlemen have handled this bill, and will have to explain it on the floor of the House.

Now, let the rule be so prepared. And, Mr. Brooks, you and Mr. Elston contact Mr. Sabath and get a hearing set down, and notify the House that you would like to have the bill up one day next week. Let us try to get through with it.

Now, again I want to thank the subcommittee. And I want to thank you, Mr. Smart, for the service you rendered in connection with this outstanding piece of legislation.

SPECIAL SUBCOMMITTEE ON POST EXCHANGES, SHIP'S SERVICE STORES, ETC.

The CHAIRMAN. Now, Mr. Smart, when you finish this bill, I hope you will take up with Mr. Philbin and his subcommittee and go to work and make an inquiry in regard to operation of the post exchanges and the ship's service stores, so you can open your hearing on that.

INQUIRIES ON SUPERCARRIER

Mr. BATES. Mr. Chairman.

The CHAIRMAN. Mr. Bates.

Mr. BATES. This is a matter I think of primary importance to this committee. As we read in yesterday's paper, and also today's paper, we observed that the Secretary of Defense has canceled the construction of the new 65,000-ton carrier, and that as a result of that, without officially notifying the Secretary of the Navy of his intention to do so, the Secretary of the Navy in a very strongly worded letter to the President, and also to the Secretary of Defense, offered his resignation in protest against such action.

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Now, I notice also in the paper yesterday, though I did not hear it, the chairman of this committee made a statement on the floor of the House in defense of such action by the Secretary of Defense.

My inquiry this morning is simply to inquire, in the light of the fact that such construction has been already authorized by the Congress and the appropriations made and the keel laid, what power under the law has the Secretary of Defense to cancel that contract?

The CHAIRMAN. Well, I am glad the gentleman——

Mr. BATES. And what conditions brought it about. I think this committee ought to be fully informed, so we will know why it was done. It may be with some justification, but I think we are at least entitled to know what the facts are.

The CHAIRMAN. I know of no better way to begin to answer the inquiry of the gentleman from Massachusetts than by reading for the benefit of the members what I said on the floor of the House yesterday. I doubt whether many members read the Congressional Record, except what they say themselves. I want to read it. [Reading:]

Mr. Speaker, last Saturday the Honorable Louis Johnson, Secretary of Defense, made a courageous and momentous decision. He ordered the termination of the construction of the 65,000-ton so-called supercarrier. In the years past I helped build a two-ocean Navy and am proud to think that was correct, for we need a two-ocean Navy to fight any war that may come. Now, we know that if war should ever come again it will be a struggle with a land power. It is simply a matter of the proper allocation of war missions between the Navy and the Air Force. It is the business of the Air Force to use long-range bombers in time of war, and yet this carrier was to accommodate such long-range bombers. We cannot afford the luxury of two strategic air forces. We cannot afford an experimental vessel that even without its aircraft costs as much as 60 B–36 long-range bombers. We should reserve strategic air warfare to the Air Force. We should reserve to the Navy its historic role of controlling the sea. I do not now, and I never will advocate, depreciation of our Navy. Secretary Johnson is to be commended both for the nature of his decision and for moving promptly to resolve this important matter.

The only criticism that I can find in reference to what the Secretary has done was the manner in which it was done. I think probably he might have been a little bit more diplomatic, but as to what his objective was I don't find any complaint with him.

Now, the question as to whether or not the Secretary of Defense has the authority to do this can be raised at the proper time, when we take up, just as soon as we can get around to it, the bill that I have introduced which gives more power to the Secretary of National Defense.

I presume that the Secretary acted on the authority of the President. I know of no law by which the President at any time is required to spend any money that the Congress might appropriate. The President can impound any appropriation, and I have known instances in the past where the money has been impounded. I think the Secretary was speaking for the President—I assume he was—and upon the advice of the Joint Chiefs of Staff.

Now, I propose to raise this question thoroughly when the Senate finishes with its bill, because we want to know if the Secretary of National Defense, by statute, or by inherent authority, can step in and do things of this kind. We want to know what authority he does have. And at the proper time I will assure my good friend from Massachusetts it will be thoroughly explored and we will see exactly, and fix by statute, if this committee will do so, the authority

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of the Secretary of National Defense, so there will be no question that can be raised as to his authority.

Mr. BATES. Well, Mr. Chairman, we all agree that the nature of the act, as you say, was momentous.

The CHAIRMAN. That is right.

Mr. BATES. The reasons for it this committee does not know. It may be that the chairman of this committee is fully informed on the reasons.

The CHAIRMAN. No, no.

Mr. BATES. Otherwise, I was under the impression, at least from what he said yesterday in complimenting the Secretary of Defense for his courageous and momentous act, that it was based upon some opinion that you had after getting all the facts.

The CHAIRMAN. It is based upon this: The mission of the Navy, Army, and Air Force was defined. There can be no doubt from the information that I have as to the mission fixed at Key West and fixed at Newport that there was a twilight zone or a duplication of missions. Therefore, I presumed the Secretary acted to quell this fuss that has been going on in the Department as to who is entitled to strategic bombing. And to prohibit anything like this from happening in the future, the very first bill that I introduced in this session of Congress was that no ship over a certain tonnage could be constructed without specific authority of the Armed Services Committee.

Mr. BATES. I don't raise any question, Mr. Chairman, as to the reason why it was done. It may be in the light of most recent developments of strategic warfare that it was the thing to do. I don't know. I am not ready to say it was at this moment. But I do know the Secretary of the Navy, and I do know that other high officials in the Navy are very much disturbed about what was done, and why it was done, and it seems to me that as members of the committee we ought to explore into this matter very thoroughly. Personally, I think we ought to have a subcommittee appointed to get into the question and find out what it is all about.

Mr. VAN ZANDT. Mr. Chairman——

Mr. BATES. I am very much disturbed, Mr. Chairman. This may be a forerunner for the elimination of the Marine Corps, and certainly we want to forestall any such arbitrary action on the part of the Secretary of Defense.

Mr. VAN ZANDT. Mr. Chairman——

Mr. RIVERS. You may have an ally. Let your friend say something.

Mr. PHILBIN. He has several allies.

Mr. VAN ZANDT. Mr. Chairman.

The CHAIRMAN. Mr. Van Zandt.

Mr. Van ZANDT. I was a member of the Hess subcommittee, who sat for many days taking testimony from spokesmen representing our armed services, and if my memory serves me correctly we received the unanimous approval of a report that we submitted recommending the construction of the carrier.

The CHAIRMAN. No, sir; you are mistaken. Here is what happened. A bill was submitted by the Navy Department to suspend obligation for the construction of 13 ships, which were in a state of completion from 20 to 75 percent; $190,000,000 had already been expended. The hearing was on that bill. I sat in at that committee hearing and asked

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a great many questions. The committee acted favorably upon the suspension of that obligation.

Now, the purpose of suspending the construction of those 13 was to use that obligation, with an appropriation, from the committee to build the airplane carrier. There was no direct authorization, and it was not necessary. The Navy was clearly within its rights to go to the Appropriations Committee and get the money. And they can go to the Appropriations Committee today and get the money for battleships, or any ship it wants, because there was put on the statute book from 1939, 1940, on enough tonnage to build two more two-ocean navies.

So, there wasn't any particular authorization. It was just a question of dollars and cents.

Mr. VAN ZANDT. Mr. Chairman, that still does not change the point that I wanted to develop. We, the members of that subcommittee, accepted testimony from representatives of the armed services. We were convinced that a carrier was necessary to carry on the type of warfare in the future. I contend that the decision on the part of the Secretary of National Defense is nothing more than a repudiation of the subcommittee who studied this matter so thoroughly, and who made recommendations to the entire House for its approval.

The CHAIRMAN. Well I have found myself more than once, as the members of the committee might find themselves, in disagreement with what is done. It happens in this instance I find myself in complete accord. I think the President probably should have stepped in to stop this squabble that is going on between the two services as to the jurisdiction of strategic warfare. This ship was designed for strategic warfare. And I think he did the right thing in stopping it.

Now, as to whether he had the authority, I presume he did because he speaks for the President. The President is responsible for this. And certainly nobody can question the right of the President, unless the Congress changes it, to impound money that Congress may appropriate.

Mr. BROOKS. Mr. Chairman.

Mr. HÉBERT. Mr. Chairman.

The CHAIRMAN. Mr. Hébert.

Mr. HÉBERT. I think this whole issue strikes at something more fundamental and more basic than the propriety of whether the carrier should be built or not. It strikes at the very basis of who is going to authorize or not authorize, and who is going to appropriate or not appropriate money.

I can't agree with the chairman that the President has any inherent right to do anything contrariwise to what the Congress authorizes or appropriates for. In a government of law there is no inherent power. It has to be spelled out.

In this particular instance—I think you said so in your statement just now—the Navy came to this committee and asked for authorization to dispense with the construction of certain ships.

The CHAIRMAN. That is right.

Mr. SHAFER. Mr. Chairman.

Mr. HÉBERT. Wait a minute. Now, they have established the precedent by coming here and asking for authorization to dispense with the construction of certain ships.

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In this instance, this committee was never consulted or taken into the confidence of the Secretary of Defense. He took it on his own. He took it without consultation of the recognized authorities. He did it without the consultation of the Joint Chiefs of Staff at Key West. He bypassed the Secretary of the Navy. He bypassed the Chief of Naval Operations. And he did it at a time when the Chief of Naval Operations and the Secretary of the Navy both were of the opinion that they would be further consulted in the matter.

The CHAIRMAN. Well, may I say when we have up this bill changing the National Military Establishment, in which they are asking for more power, I hope some of these members will be just as vehement in preserving——

Mr. HÉBERT. Mr. Chairman, I made up my mind as to my vote on that bill.

Mr. SHAFER. Mr. Chairman.

Mr. BROOKS. I think the chairman——

The CHAIRMAN. Wait one minute.

Mr. BROOKS. We ought to have up as soon as possible the unification bill. I think the Defense Secretary ought to be given more power.

Now, I think he had the power, all right, to do this. But I think we ought to go into that matter and give them the unification bill that they need. This useless squabbling and backbiting among the services ought to be eliminated, in the interest of the best there is for the United States. We are not going to do it until we go into that matter.

I want to commend the chairman for stating he is going to call that bill up at an early date.

The CHAIRMAN. Well, wait one minute.

Mr. BROOKS. When we can go into the matter of defining the functions of the services and giving them the basic law that they need.

Mr. RIVERS. I would like to say this: I'll bet you it won't be called up right away.

Mr. SHAFER. Mr. Chairman.

The CHAIRMAN. Wait a minute. You are pressing the chairman a little too fast.

Mr. RIVERS. I'll bet——

Mr. SHAFER. Mr. Chairman.

The CHAIRMAN. Let us have order. We will get around to it. When the Senate passes that bill, and it comes over here, it is going to be considered like other Senate bills. But it is going to be thoroughly considered and we are going to weigh every power we give to the Secretary of National Defense and every power that we take away.

Mr. SHAFER. Mr. Chairman.

Mr. BROOKS. Mr. Chairman, the House is in session.

Mr. SHAFER. I wonder if the President and the Secretary of Defense were following out the Air Policy Board's review on that?

The CHAIRMAN. I would say they are following——

Mr. SHAFER. I am wondering whether they probably had Mr. Hinshaw up there, and the rest of them?

The CHAIRMAN. We will take a recess until the call of the Chair.

(Whereupon, at 12 noon, the committee recessed subject to the call of the Chair.)

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[No. 45]

TO PROVIDE FOR CERTAIN ADJUSTMENTS ON THE PROMOTION LIST OF THE MEDICAL SERVICE CORPS OF THE REGULAR ARMY (H. R. 4449). MR. BROOKS

THE SECRETARY OF DEFENSE,
Washington, April 22, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: Attached is a letter addressed to you by the Secretary of the Army recommending the enactment of a proposed draft of legislation, also attached, bearing the title, "To provide for certain adjustments on the promotion list of the Medical Service Corps of the Regular Army."

This legislation has been approved for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the establishment has been placed in the Department of the Army.

With kindest personal regards, I am,

Sincerely yours,

LOUIS JOHNSON.

DEPARTMENT OF THE ARMY,
Washington, D. C., April 14, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

Dear Mr. SPEAKER: There is enclosed herewith draft of a bill to provide for certain adjustments on the promotion list of the Medical Service Corps of the Regular Army, which the Department of the Army recommends be enacted into law. The Secretary of Defense has assigned responsibility for the preparation and submission of this measure, on behalf of the National Military Establishment, to this Department.

The purpose of the proposed legislation is to authorize the readjustment of the Medical Service Corps promotion list, Regular Army, so that within each grade the names of the officers will appear in the order of their precedence determined by the total amount of service creditable to them for promotion purposes (subject, however, to certain limitations with respect to any officer who has failed of selection for promotion under the provisions of the Officer Personnel Act of 1947), so as to (1) correct a serious inequity which exists in the Medical Service Corps Regular Army promotion list as a result of statutory changes affecting that corps, and (2) correct a situation which would otherwise require that future permanent promotions be accelerated for a very substantial group of Medical Service Corps officers, Regular Army, for reasons other than were contemplated and provided for in the Officer Personnel Act of 1947.

Officers integrated into the Pharmacy Corps in May 1947 under the provisions of the act of December 28, 1945 (59 Stat. 663), as amended by the act of August 8, 1946 (60 Stat. 925), and the act of May 15, 1947 (61 Stat. 95), who were credited with more than 6 years' service but less than 12 years' service were appointed in the grade of captain, and those credited with more than 12 years' service but less than 20 years' service were appointed in the grade of major. Likewise, other officers of the Pharmacy Corps were promoted to the grade of captain after 6 years' service and to major after 12 years' service. The Army-Navy Medical Services Corps Act of August 4, 1947 (61 Stat. 734), abolished the Pharmacy Corps, transferred all officers thereof to the new Medical Service Corps, and provided for integration and promotion on the same basis as had previously been

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provided for promotion-list officers. Accordingly, after enactment of that act, officers integrated into the Army in the Medical Service Corps who were credited with more than 3 years' service but less than 10 years' service were integrated in the grade of first lieutenant, officers credited with more than 10 years' service but less than 17 years' service were integrated in the grade of captain, and those credited with more than 17 years' service but less than 23 years' service in the grade of major and promotions to the mentioned grades were based upon like periods of service.

A serious inequity with respect to officers in the Medical Service Corps resulted from these statutory changes, in that officers who were integrated into the Pharmacy Corps in May 1947 and later transferred in grade to the Medical Service Corps under provisions of the Army-Navy Medical Services Corps Act of August 4, 1947, became senior in permanent grade to many officers of the Medical Service Corps who were credited with more service for promotion purposes; and conversely, through no fault of their own, and due to causes entirely beyond their control, many officers of the Medical Service Corps found themselves junior in permanent grade to officers transferred from the Pharmacy Corps who were credited with much less service for promotion purposes.

The application of existing law will result in future permanent promotions being accelerated for a very substantial group of Medical Service Corps officers whose names presently appear on the promotion list above other officers in the same grade who have much more service creditable to them for promotion purposes. Present law requires that names appearing above those of other officers in the same grade must be submitted to the selection board at the same time as the latter names notwithstanding the greater amount of service creditable to the latter for promotion purposes.

Enactment of this bill will result in no additional cost to the Government and will in the long run result in a saving. No increase in pay will result to any officer by passage of this bill since it authorizes only a readjustment of the Medical Service Corps, Regular Army, promotion list within each grade and does not promote any officer.

This report has been coordinated among the departments and boards in the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has been consulted and advises that there is no objection to the submission of the proposed legislation for the consideration of the Congress.

Sincerely yours,

KENNETH C. ROYALL,
Secretary of the Army.

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[No. 46]

TO AMEND SECTION 312 OF THE OFFICER PERSONNEL ACT OF 1947, AS AMENDED, SO AS TO PROVIDE FOR THE RETENTION OF CERTAIN OFFICERS OF THE MEDICAL AND DENTAL CORPS OF THE NAVY (H. R. 4516). MR. HARDY

THE SECRETARY OF DEFENSE,
Washington, April 30, 1949.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Navy recommending the enactment of a proposed draft of legislation, also attached, bearing the title "To amend section 312 of the Officer Personnel Act of 1947, as amended, so as to provide for the retention of certain officers of the Medical and Dental Corps of the Navy."

This legislation has been approved for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Navy.

With kindest personal regards, I am,

Sincerely yours,

LOUIS JOHNSON.

THE SECRETARY OF THE NAVY,
Washington, April 22, 1949.

The Honorable SAM RAYBURN,
Speaker of the House of Representatives, Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a proposed bill to amend section 312 of the Officer Personnel Act of 1947, as amended, so as to provide for the retention of certain officers of the Medical and Dental Corps of the Navy.

The purpose of the proposed bill is to amend subsection (b) of section 312 of the Officer Personnel Act of 1947, as amended, so as to provide that the number of captains of the Medical and Dental Corps of the Navy which may be recommended for continuation on the active list shall be such number as the Secretary of the Navy may determine necessary to meet the needs of the service, and to provide that until June 30, 1952, no such officer shall be involuntarily retired pursuant to the provisions of that subsection prior to reaching the age of 62.

Under the provisions of subsection (b) of section 312 of the Officer Personnel Act of 1947, as amended, not to exceed 22 officers in the Medical Corps of the Navy and 12 captains in the Dental Corps of the Navy, recommended for continuation on the active list in the approved report of a selection board, may be so continued until the report of the next succeeding selection board is approved. No such captain may be continued on the active list beyond June 30 of the fiscal year in which he shall have completed 35 years of total commissioned service as defined in section 202 of that act. Such captains not again recommended for continuation on the active list in the approved report of a selection board are placed on the retired list on June 30 of the then-current fiscal year.

There are in the Medical Corps of the Navy 44 officers in the grade of captain eligible for recommendation for continuation on the active list who are now under consideration by a selection board for such recommendation. Since the selection board may not recommend more than 22 of these officers for continuation on the active list, the remainder of such officers must, under the provisions of subsection

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(b) of section 312 of the Officer Personnel Act of 1947 be placed on the retired list on June 30, 1949. While a similar situation does not exist at this time among such captains in the Dental Corps, it is anticipated that it will arise when the next selection board is convened.

Enactment of the proposed measure would, until June 30, 1952, prevent the involuntary retirement until they reach 62 years of age of captains of the Medical and Dental Corps of the Navy who might otherwise be so retired under the provisions of the Officer Personnel Act of 1947, as amended, and would make it possible after that date to retain on the active list until they have completed the specified years of service such numbers of captains of the Medical and Dental Corps as the Secretary of the Navy may determine are required to meet the needs of the service.

The Navy Department has been designated by the Office of the Secretary of Defense to present this proposal on behalf of the National Military Establishment. The Navy Department accordingly recommends enactment of this measure.

Enactment of the proposed measure would result in no additional cost to the Government since the officers retained on the active list would be within the appropriated strength of the Medical Corps of the Navy.

This report has been coordinated within the National Military Establishment in accordance with procedures prescribed by the Secretary of Defense.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

JOHN T. KOEHLER,
Acting Secretary of the Navy.

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